



BUILDING AND CONSTRUCTION

The Thai Cabinet increases fire safety system requirements in high-rise buildings and extra-large buildings.

On 29 August 2023, the Thai Cabinet passed its resolutions regarding the safety system requirements stipulated in the Building Control Act (“BCA”) by approving the principle on the draft Ministerial Regulation No... (B.E.) issued in accordance with the Building Control Act B.E. 2522 (amending the Ministerial Regulation No. 33 B.E. 2535) (“Draft Ministerial Regulation”) as proposed by the Ministry of Interior (“MOI”).

The summary of the Draft Ministerial Regulation is set forth below:

- (1) Provide a clearer definition, such as the definition of road zone, separation, and basement;
- (2) Provide additional requirements to be correspondent with existing laws and international standards, such as:
 - Adding details about public roads to ensure that fire trucks can move in the opposite direction.
 - Adding requirements for fire escape stairs available on the 1st and 2nd basement floors. The fire escape stairs shall be easily accessible.
 - Adding requirements to install floor plans of each floor of the building in a clearly visible location, such as in the hallway or in front of every elevator on every floor.
 - Adding requirements for the installation of hand-held fire extinguishers or

portable fire extinguishers (hand-held type) in accordance with the Notification of the MOI regarding the installation of hand-held fire extinguishers or portable fire extinguishers.

- Amending the fire resistance rating for walls, doors, or other equipment made from fire-resistant materials from not less than 1 hour to not less than 2 hours for high-rise buildings and not less than 1 hour for extra-large buildings that are not high-rise buildings.
- Amending requirements for fire escape stairs by adding regulations on fire escape signs and adding materials used for the exterior walls of buildings.

In addition, a transitional provision has been provided for (i) buildings falling under the category of high-rise buildings or extra-large buildings that exists before the date this Draft Ministerial Regulation came into force; or (ii) buildings that obtained a permit or license for construction, modification, or change of use in accordance with the BCA but have not yet completed constructed or modified, to be exempted from the Draft Ministerial Regulation.

The Construction Permit for the Luxury Sathon Condo has been revoked

The Central Administrative Court revoked a construction permit and an environment impact assessment (EIA) report of a Sathon Condominium because the actual project construction’s size is larger than the permitted size of land, resulting in non-compliance with clause 5 of the Ministerial Regulation No. 33 (B.E. 2535) issued by virtue of Building Control Act (“BCA”). This luxurious condominium is comprised of 36-storey twin towers, including

755 units, 275 automatic parking spaces, and 158 traditional parking lots.

In accordance with clause 5 of the Ministerial regulation No. 33, any high-rise building or extra high-rise building, which is constructed on the land of its location, shall have the ratio of total floor area of all floors of every building to the land area of its location not exceeding 10 to 1.

Unfortunately, the issue of this case eventually arose from miscalculation of the floor area ratio, as abovementioned, by excluding the areas of the rooftop, stairs installed outside the roof, and a space for machinery installation, belonging to the existing building located in the same land areas, known as “The MET Condominium.” This, hence, causes the miscalculation of floor area ratio of this Sathorn Condominium exceeding the specified ratio as required by clause 5 of the Ministerial regulation No. 33. As a consequence, the Central Administrative Court retroactively revoked the EIA approval and building construction permit of this Sathorn Condominium project on 27 September 2023.

As a side note of this decision, it is noteworthy that under the Ministerial Regulation No.33, “High-Rise Building” is defined as a building with the height of more than 23 meters¹ and “Extra-Large Building” term is conceptually defined as a building with the total area of more than 10,000 square meters. This Regulation also provides other general restrictions and conditions for the construction of high-rise buildings and extra-large buildings, for examples, both types of buildings must have a distance at least 6 meters away from other people’s plots of land or from public roads, excluding the building foundation; and both are required to have an open space at least 30 percent of the land of its location for residential buildings.

Last but not least, in any case, before constructing any buildings, a building owner needs to ensure that the building owner has

provided the required information specified under section 39 bis of the BCA to a local competent official and obtains a permit for building construction.

CONSUMER PROTECTION

New announcement on the label-controlled products

Laser beams have been included as a key component in various products such as fax machines, copy machines, laser pointers, etc. However, laser beams also have an impact on safety, as they can pose risks to human eyes and skin if not used properly. To enhance consumer safety, the Committee on Labels, having power under Section 30 and Section 31 of the Consumer Protection Act B.E. 2522, has determined that products containing lasers as key components should be regulated as label-controlled products.

With the enforcement of this announcement, the label-controlled products will be required to display the following information on the products:

- (1) The name, category, or type of goods, including country of origin in the case of imported goods;
- (2) The name or trademark registered in Thailand of the manufacturer for sale in Thailand;
- (3) The name or trademark registered in Thailand of the importer for sale in Thailand;
- (4) Country of Manufacturing;
- (5) The place of manufacturing or the place of business of import of the product for sale;
- (6) Size or dimension or quantity or capacity or weight of goods;

¹ Height of a building is measured from the ground surface level to the rooftop floor. For gable roof or hip roof building, the height shall be measured from ground surface level to the topmost ceiling.

- (7) Class, Wavelength, and Maximum output power that is one of the key components of the label-controlled product shall be specified;
- (8) Instruction;
- (9) Recommendation or prohibition;
- (10) Warning (if any);
- (11) A manufacturing date or an expiry date;
- (12) A date for usage in the period before the date specified (if any); and
- (13) Price indicated in Thai Baht or other foreign currencies.

However, if the items of 1-10 requirements listed above cannot be displayed all at once on the label-controlled products, the Manufacturer could insert the remaining information to be attached to the package of the label-controlled products. This announcement will come into force on 27 January 2024.

FINANCIAL

Fiscal Policy Office of the Ministry of Finance proposed for amendment to regulation regarding Pico-finance

The Fiscal Policy Office (“FPO”) of the Ministry of Finance (“MOF”) has recently issued a draft of amendment to the MOF’s notification regarding the microfinance or pico-finance (“Draft”) at the provincial level in order to avoid the rate of loan shark issues and protect consumers. This Draft proposes that the amount of interest, indemnity, service, and other fees must not exceed 28 to 36 percent of the loan.

In addition to that, a business operator is required to:

- (1) to be registered as a company under Thai laws, having at least 50 percent of its total shares held by a Thai shareholder;

- (2) have 50 percent of its registered capital fully paid-up;
- (3) operate its business activities within one year after a pico-finance license is granted from the MOF the license for pico-finance. If the business operator does not operate its business activities by granting a loan to its customers within one year from the date of the granted license, the license will be revoked and shall be returned to the MOF within 15 days.

HOSPITALITY AND TOURISM

New Ministerial Regulation Prescribing Categories and Rules for Hotel Business Operations

The new Ministerial Regulations Prescribing Categories and Rules for Hotel Business Operations (No. 2) B.E. 2566 (2023) (“The New Regulation”) was published in the Royal Thai Government Gazette on 30 August 2023, and becomes effective on 29 October 2023.

The New Regulation contains the following key changes:

- (1) New definition of “Non-hotel”: The MOI expands the definition of non-hotel accommodations from those with 4 rooms and a maximum of 20 guests to include properties with no more than 8 rooms catering to a maximum of 30 guests.
- (2) New classification of hotel: The New Regulation categorizes hotels into 4 distinct types, each with its own defining features:
 - *Category 1*: Category-1- a hotel pertain to hotels exclusively offering rooms and possessing a maximum of 50 rooms;
 - *Category 2*: Category-2 – a hotel comprises those with more than 50 rooms, or hotels providing both rooms

and facilities for dining, food services, or cooking.

- *Category 3:* Category-3 – a hotel provides rooms, dining room, or places for food services or cooking and has either entertainment places or conference rooms in accordance with the relevant laws or conference rooms.
- *Category 4:* Category-4 – a hotel provides rooms, dining room, or places for food services or cooking and has both entertainment places and conference rooms in accordance with the relevant laws and conference rooms.

(3) Endorsement of new types of accommodation: The new regulations encompass a broad new spectrum of accommodation and, thus, hotel business operators can make special type of accommodations and temporary lodgings in the form of floating rafts, tents, containers, or even repurposed vehicle wrecks, all designed to preserve the unique identity of each community. This initiative aims to not only entice tourists but also bolster the community's economic prospects with supplementary income.

(4) Additional rules and criteria on new types of accommodation: Furthermore, the New Regulation includes guidelines and safety criteria aimed at ensuring the well-being of hotel guests. These include requirement of hygienic public restroom installment, stipulation mandating the assignment of room numbers to each accommodation unit, necessitation for incorporating safety features within each accommodation unit, including the installation of locks and peepholes.

Visa-free is expected to attract more tourists from China and Kazakhstan

The Thai Government is implementing a strategic initiative aimed at revitalizing its

tourism industry. This initiative involves the introduction of a visa-free policy for tourists from two key nations: China and Kazakhstan. Under this policy, tourists hailing from these countries will have the privilege of traveling to Thailand without the need to apply for the conventional visa application process. This remarkable change will be in effect for an extensive period, commencing on 25 September 2023, and extending all the way until 29 February 2024. In addition, the Thai Government expects that this initiative plan could generate more income for the country and assist in the recovery of tourism sectors that have been adversely affected by the COVID-19 pandemic.

The Immigration Bureau of Thailand (“IB”) has announced its readiness to welcome tourists from both countries by bolstering its staff presence at Suvarnabhumi International Airport checkpoints. In addition to this prepared plan, the IB is also implementing measures to screen and track tourists. This proactive approach is in place because the visa-free scheme could potentially be exploited by some tourists for engaging in illicit activities in Thailand. In addition, hotels must provide the IB with the details of tourists at the hotel check-ins. Failure to do so may result in a penalty of not exceeding THB 8,000.

Enhancing Visa Fee Reduction and Streamlining Temporary Stay Permission Fees for Foreign Workers in the Kingdom

On 3 October 2023, the Cabinet passed a resolution to decrease visa fees and application charges for temporary stay permits within Thailand. These fee reductions will apply to two categories of foreigners: those visiting Thailand to work under the Memorandum of Understanding on Cooperation in Labor Employment and individuals who have received special permission to enter the country.

With the approval to reduce visa fees, the Ministry of Interior is tasked with issuing ministerial regulations in accordance with the Immigration Act B.E. 2522. These regulations

will specify the rates for visa fees and fees for applications for temporary stay permits under the aforementioned circumstances.

Upon the enforcement of the Ministerial Regulations concerning the reduction of visa fees, the new visa fee rate will be set at THB 500. However, according to the cabinet synopsis, this regulation would be effective for the duration of 4 years.

In conclusion, lowering visa fees for foreigners visiting Thailand under the two aforementioned conditions would serve as a testament to Thailand's commitment to promote foreign labor cooperation and also has the potential to boost our country's economic growth, as the resulting increase in income could be substantial.

LABOUR

New regulations regarding the electronic investigation of facts by labour inspectors

According to the Labor Protection Act, B.E. 2541 (“LPA”), labour inspectors shall have powers to issue an inquiry notice or a summon to employers, employees, other relevant persons to investigate, gather facts, or collect necessary documents for consideration in order to guarantee workplace compliance with labour regulations.

On 24 August 2023, the Ministerial Regulation of the Department of Labour Protection and Welfare regarding investigation of facts by electronic means, B.E. 2566 (2023) was published in the Royal Thai Government Gazette to set criteria regarding the investigation of facts by electronic means for compliant consideration by the labour inspectors and to enable employers, employees, and related parties to obtain facts leading to the consideration of petitions and orders from the labour inspectors in accordance with LPA efficiently.

The new regulation includes the following provisions:

- (1) General provisions;
 - Right to request the labour inspector to conduct an investigation by electronic means.
 - Labour inspectors cannot refuse to conduct an investigation by electronic means solely on the grounds that it involves electronic means.
 - Delivery of documents, evidence or information of the parties or witnesses to the labour inspectors can be sent by electronic means and in the case of copies of documents, such documents do not need to be certified.
- (2) Facts investigation by electronic means;
 - The location used by the parties or witnesses for the electronic investigation must be an appropriate location which is not a public place.
- (3) Electronic recording of images and sound.

SECURITY

Cooperation between the Securities and Exchange Commission and the Stock Exchange to enhance the oversight of the Thai capital market

The Office of Securities and Exchange Commission (SEC) stands fully committed to collaborating with the Stock Exchange of Thailand (SET) to enhance the oversight of the Thai capital market. This collaborative effort will entail a comprehensive five-step approach, commencing with rigorous screening of listed securities even before their initial public offerings, followed by stringent monitoring of securities entering and exiting the market. Our shared objective is to fortify the Thai capital market, rendering it a trusted and inclusive

ecosystem that benefits both investors and the broader community (A Capital Market for All).

Within the ambit of the 'Strong Securities Issuers Project,' SEC have been making steady strides in implementing measures aimed at fostering investor protection and bolstering the integrity of the capital market. These measures include:

- (1) Elevating the standards for quality screening and oversight of companies listed on the stock exchange, mandating adherence to principles of good governance and criteria for backdoor listings.
- (2) Enhancing the competence of key personnel in the capital market, including auditors, financial advisors, and personnel responsible for securities issuance. This will ensure that the SEC carries out their roles with impartiality and dedication to safeguarding the interests of shareholders and investor protection.
- (3) Facilitating the creation of a mechanism that empowers investors with knowledge and tools to safeguard their rights effectively.

The Securities and Exchange Commission enhances fund investment ratio criteria to bolster fund management flexibility while prioritizing the optimal benefits of investors

On 21 March 2023, the Securities and Exchange Commission (the “SEC”) updated its criteria and guidelines for taking action in cases where funds deviate from specified investment ratios. This move is aimed at enhancing investment management flexibility while prioritizing investor benefits. These changes will come into effect on 16 April 2024, and will include the removal of investment restrictions on deposits and debt instruments. Investments in these assets will adhere to the same general investment ratio criteria as other asset types. These regulatory adjustments will be effective from 16 October 2023.

Subsequently, the SEC issued two key announcements to refine fund investment ratio criteria, with the key highlights outlined as follows:

- (1) Enhancing the criteria and procedures for addressing any violation of a fund's investment ratio, including a case where the management company is unable to maintain the specified ratio due to factors beyond its control (passive breaches). In such instances, the management company will not be deemed in violation of the criteria, even if factors such as abnormal fluctuations in asset values, heightened unit redemptions, or downgrades in the credit rating of the fund's invested instruments occur. Previously, these events would constitute an active breach by a management company and resulted in a criteria violation.

In addition, the SEC will refine the management company's procedures in the event of a passive breach. This will grant the management company an authority to take corrective actions within a specified timeframe to realign with the defined criteria. However, should the management company decide not to make corrections at its discretion within the stipulated period, it will require approval of the mutual fund's trustee or the provident fund committee, as applicable. These responsible parties will also oversee and track the progress of corrective measures at least monthly until compliance is achieved. The revised criteria have been officially published in the Royal Thai Government Gazette and will be effective from 16 April 2024.

- (2) Enhancing the criteria for investment ratio concerning deposits and debt instruments issued by legal entities under Thai law, serving as issuers, drawers, or counterparties, to align with the overarching investment ratio criteria

applicable to other asset types. This adjustment aims to streamline investments, introducing criteria based on asset issuers or counterparties (single entity limit) to mitigate the risk associated with a single issuer or counterparty. Additionally, it establishes criteria for investment ratios determined by business groups (group limit) to mitigate the risk of concentrated investments within the same business group and similar measures. These updated criteria were officially published in the Royal Thai Government Gazette and are in effect since 16 October 2023.

The Office of Securities and Exchange Commission conducts public hearing on filing fee deduction using expenses regarding carbon footprint

Per the Office of Securities and Exchange Commission's (the "SEC Office") commitment to Environment, Social, and Governance (the "ESG"), the SEC Office have opened a public hearing on a draft of SEC Office's Notification Regarding Measures in Filing of the Annual Registration Statements and Registration Statement for Securities Offering for the Companies Disclosing a Carbon Emission Information (the "Draft") from 20 October 2023 to 18 November 2023.

This is to extend the SEC Office's commitment on ESG as shown in the previous notification of the SEC Office Sor Mor. 18/2564, which, in brief, have supported a company on the expense on the Carbon Footprint Assessment Registered Verifier (the "Verifier") for the disclosure on the filing of Annual Registration Statements (the "Form 56-1") and the filing of Registration Statement On Securities Offering (the "Filing") by allowing the company to be able to use such paid expense to deduct the fee made to the SEC office but not more than the actual amount or THB 50,000, which effect will come to the end by 2023.

Accordingly, the Draft provides the continuation of allowed deduction in the same manner until the year 2026 for the Filing submission and for the years from 2023 to 2025 submission of the Form 56-1, with minor important additions. Firstly, the fee paid on the registered consultant for preparation of carbon footprint is also claimable in addition to that of the Verifier. Secondly, a public company that operates business of a holding company can claim the fee deduction from the expense of the operating company. Thirdly, there is a timeframe in which the company can claim for deduction, which is on the date of filing of the Form 56-1 unless necessary and appropriate reason is provided and from the date of application of public offering of newly issued share to the effective date of the Filing.

TAXATION

Value Added Tax ("VAT") has been collected in Thailand since 1992 to impose tax on the sale of goods and services. According to Section 80 of the Revenue Code of Thailand, the standard rate of Value Added Tax or VAT in Thailand is 10 percent. However, on 13 September 2023, the Cabinet of Thailand approved an extension period for the reduction of the VAT rate, from 10 percent to 7 percent for an additional year.

The extension of the reduced VAT rate is effective from 1 October 2023 to 30 September 2024, with the aim of supporting the consumption of goods and services, promoting economic growth in the country, and encouraging investments by the private sector. In general, the reduced rate is typically extended on an annual basis, but it was previously extended by 2 years due to the challenges that arose from the COVID-19 pandemic.

The recent decision to extend the reduced VAT rate in Thailand demonstrates a strategic government policy aimed at boosting economic

activity, encouraging investment, and mitigating the effects of economic challenges.

Change in interpretation of Thai tax law regarding foreign-sourced income and the rethink urged on the proposed change

According to tax collection regarding foreign sourced income by the Revenue Department of Thailand (“RD”), for decades Section 41, Paragraph 2 of the Revenue Code has been interpreted in a way that meant assessable income derived by a Thai tax resident from employment abroad, overseas businesses, or foreign-based property would only be subject to personal income tax if it was brought into Thailand within the same tax year.

The RD recently issued the RD Order No. Por 161/2566 regarding tax collection on accessible income in accordance with Section 41, Paragraph 2 of the Revenue Code on 15 September 2023. It provides a new guidance to tax officers, stating that foreign-sourced income brought into Thailand on or after 1 January 2024 will be subject to personal income tax, regardless of the tax year in which the income was originally earned. It is to be noted that any regulation, order, or revenue ruling that is contrary to the Order No. Por 161/2566 of the RD shall be repealed.

Given these changes, it is highly advisable for taxpayers, especially those engaged in cross-border business activities, to proactively seek professional advice and stay informed about any further clarifications or amendments to tax guidelines. In addition, the shift in the interpretation of Section 41 is seen as the RD's response to close the loophole that allowed individuals to avoid personal income tax by remitting income earned abroad in an initial year to a subsequent tax year.

The Order No. Por 161/2566 of the RD has an enormous effect on foreign-sourced income to be brought into Thailand.

However, the RD subsequently issued its exemption that foreign-sourced income prior to 1 January 2024 which will be brought into Thailand in 2024 is exempted from tax in Thailand.

In addition, the double tax income is raised since some individuals may have paid taxes in foreign countries. Thailand has a lot of double tax treaties with other countries in order to prevent double taxation and that those treaties are applied in relation to foreign-sourced income.

It should be followed how the RD would enforce its Order No. Por 161/2566.

A tax advice should be sought from a tax advisor.

Double tax deduction for a donation made to education institutions through e-donation system

According to the Royal Decree issued under the provisions of the Revenue Code concerning tax exemptions (No. 768), it is specified that donations made through this system qualified for double tax deductions as allowances for donors. Educational Institutions include the following:

- (1) Public schools;
- (2) Private schools but not include non-formal education;
- (3) Private higher education institutions;
- (4) Educational institutes established in Thailand according to a treaty or agreement between the Thai government and the United Nations specialized agencies are Asian Institute of Technology (AIT); and
- (5) Higher education institutions from abroad, which were approved by the Educational Management Development Committee, such as CMKL university.

However, there are distinctions between requirements for donations made by individuals and juristic persons, which are as follows:

- (1) **Individual Donations**: Individuals are eligible to receive double deductions as allowances for their donations, but these donations must be in the form of monetary contributions.
- (2) **Juristic Person Donations**: In contrast, juristic persons, which include companies and other types of legal entities, enjoy a broader scope of eligibility. They have the option to make both monetary donations and properties. This means that in addition to providing monetary funds, juristic persons can also donate physical assets such as property or equipment.

The Ministry of Finance and the Ministry of Interior assess land and building tax

The Ministry of Finance (“MOF”) and the Ministry of Interior (“MOI”) have been assessing problems regarding the efficiency in collecting land and building tax. The Fiscal Policy Office Director-General indicated that the law must be re-evaluated or re-assessed every five years by a public hearing.

As provided in section 7 of the Land and Building Tax Act (the “Act”), the Act empowers local administrative organizations to collect the tax from properties located in their jurisdictions with the aim of increasing public revenue and creating efficiency in tax collection whereby the tax base for calculation of land and building tax depends on the value of a land plot and/or a building, assessed by the Treasury Department, as prescribed in section 35 and section 36 of the Act.

The tax rates under section 37 of the Act vary, depending on the purposes of a plot of land and a building used for, which can be categorized as agricultural, residential, commercial, or vacant or unused property. The law also provides tax exemption to minimize the tax burdens, provided

that the owner must be an individual and the appraised value of the land and the house does not exceed 50 million baht. The specific tax rates reduction and exempting rules shall be published in the Royal Decree regularly in each tax year.

In accordance with the latest update on this law, the Royal Decree on Land and Building Tax Reduction (No.3) B.E. 2566 (2023) was issued. This Royal Decree generally provides a tax reduction of 15 percent for all land and buildings regardless of its usage purpose with few non-eligible exemptions.

An update on the method for submission of P.N.D.1, P.N.D.1 (Kor) and P.N.D.1 (Kor, Special)

On 21 September 2023, the Revenue Department (“RD”) issued Notification of the Director General of the RD No. 438, outlining the methods for submitting P.N.D.1, P.N.D.1 (Kor), and P.N.D.1 (Kor, Special) for declaring income tax purposes. Starting in January 2024, the RD mandates that P.N.D.1, P.N.D.1 (Kor), and P.N.D.1 (Kor, Special) must be submitted through the e-Filing and e-Withholding Tax system.

However, in cases where an employer is not able to submit those P.N.D forms via the e-Filing and e-Withholding Tax Systems, the RD requires the employer to file a paper tax return at the local Revenue office, including the reasons for not being able to file those forms through the e-Filing channel.

In addition, the RD mentioned that the change in submission of P.N.D forms methods is one of the RD’s preparations to accomplish the goal of establishing the Digital Tax Ecosystem and would help to improve the RD’s services.

TELECOMMUNICATION

The anticipated acquisition of 3BB by AIS remains uncertain

The National Broadcasting and Telecommunications Commission (the “NBTC”) still considered the deal of acquiring 3BB by AIS.

The deal has been listed as one of the agenda, which would be considered by the NBTC board since the board is required to consider the list within 15 days from the date of the proposal, as stipulated under section 30 of the Act on the Organization to Assign Radio Frequency and To Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010) (the “Act”). Also, the NBTC board informed that they rely on the international advisor’s study in regard to the economic effects, which would be completed by the end of October 2023.

However, it is doubted that the 15-day timeframe for considering the deal might not be in compliance with section 30 of the Act. To this issue, the chairman of the NBTC board argued that the board had no power to approve or

disapprove of such deal, which is similar to the earlier deal between True Corporation and DTAC. Also, the board can only acknowledge the aforementioned deal and issue remedies.

The NBTC board is comprised of 5 members last year on voting the merger and acquisition plan between True and DTAC. Additionally, with reference to the 3BB deal, the NBTC source stated that the decision of AIS taking over 3BB will depend on the majority of the NBTC board, which currently consists of the full quorum of 7 members.

Previously, the board has already approved the takeover guidelines of 3BB and the investment plan in Jasmine Broadband Internet Infrastructure Fund (JASIF) by AIS. AIS is committed to hold a whole stake of 3BB and acquire 19 percent stake in JASIF. This takeover deal would make AIS a new leader with 43.7 percent of market share.

Should you have any question, please do not hesitate to contact us via info@bglballaw.com

