



FINANCIAL

MORE chief aims to snap up shares

On 10 November 2022, the abnormal trading stock of More Return Public Company Limited (“MORE”) had taken place and has crucial effect on the Stock Exchange of Thailand (“SET”) and investors who held the shares of MORE.

Due to the fact that the stock exchange of Thailand found that More’s securities were suspiciously traded from the previous period with a trading volume as high as 1,500 million shares or equivalent to 4,300 million Baht which led to a trading value of More’s securities up to 7,142 million Baht throughout the day.

In addition, it was found that an bidding order at a price of 2.90 Baht per shares with equivalent to 1,500 million Baht sent from only one purchaser through several brokerage companies and an offering order sent from a number of sellers and the offer price was similar to the bid price.

As a result, the More’s securities were suspended from trading on the stock exchange of Thailand by the SET from 14 November 2022 to 18 November 2022 in order to investigate the facts and evidence in relation to unusual transaction.

CIVIL AND COMMERCIAL

The Significant Amendments to the Civil and Commercial Code of Thailand (No.23) B.E. 2565 (A.D.2022)

The Amendments to the Civil and Commercial Code (No.23) B.E. 2565 (A.D. 2022) (the “Amendment”) were published in the Government Gazette on 8th November 2022, and later will

become effective in 90 days after its publication or effective on 7th February 2022. According to the Amendments, there are several important points as follows:

1. **Incorporation of limited companies**

- **The minimum number of promoters:** Prior to the Amendment, the law requires at least three promoters for incorporation of a limited company. However, with the Amendment, the minimum number of promoters has been reduced from three promoters to two promoters in case of the incorporation of the limited company starting from 7th February 2022 onwards.
- **The effectiveness of Memorandum of Association (“MOA”):** The Amendment requires that the limited company shall be incorporated within 3 years from the date of registration of its MOA with the Department of Business Development (“DBD”), otherwise such MOA shall become ineffective.
- **The share certificate:** The Amendment requires that a share certificate shall be signed by at least one director and affixed with the company’s seal (if any).

2. **Meeting Arrangement:**

- **The Board of Director e-Meeting:** The Amendment allows the meeting of directors to be held electrically unless it is prohibited by the articles of association. Any director(s) who attends the e-Meeting shall be counted as a quorum with a right to vote. However, the e-Meeting shall

comply with the Emergency Decree on Electronic Meetings B.E. 2563 (A.D.2020).

- **The notice of general meeting:** In case the company has issued share certificates to its the shareholders, the notice of the company shall be published in a local newspaper or the electronic media in accordance with the prescribed ministerial regulation by not less than 7 days for considering general matters and 14 days for considering special matters prior to a general meeting.
 - **The Quorum of general meeting:** The Amendment specifies the quorum of general meeting which shall consist of at least two shareholders or proxies who hold at least 25% of the total shares in order to consider and approve the matters .
3. **Dividend:** The payment of dividend shall be completed within 1 month from the date of holding a resolution regarding the dividend payment.
4. **Merger of limited companies:** Limited companies can be merged upon a special resolution, and if such special resolution approves the merger, it shall be registered within 14 days from the date of the resolution. On the other hand, if a shareholder objects to the merger, the Amendment requires the limited company to arrange for the mandatory purchase of shares held by objecting shareholders at the agreed price or at the price determined by the asset evaluator.

CABINET APPROVAL

New Year's gifts measures to be approved by the Cabinet

A number of Thai government agencies plan to propose measures during the New Year celebration in order to stimulate domestic consumption and revitalize the economy so that it can recover continuously. The Ministry of Finance is proposing to the Cabinet for the extension of time on reducing jet fuel excise tax in order to help the airline industry's lessen operating costs as a result of the pandemic. The Ministry of Tourism and Sports intends to encourage spending by the foreign tourists by changing the opening hours of the night entertainments in Phuket which is a pilot area. Moreover, in 2021, the Cabinet had approved the *'We Travel Together'* measure, which generated a lot of revenues. In this relation, the Ministry of Tourism and Sports aims to relaunch this measure for the upcoming year to encourage the growth of the local tourism sectors.

Apart from aforementioned, the Ministry of Finance also proposed to relaunch the *'Shop Dee Mee Kuen'* measure that would allow customers to claim a tax deduction for shopping up to 40,000 THB on goods or services. The measure regarding tax deduction is split into two parts as follows:

1. 30,000 THB for goods or services for the shoppers who receive paper tax invoices; and/or
2. Other 10,000 THB for electronic tax invoices.

However, the tax deduction plan does not cover payment for alcoholic beverages, cigarettes, vehicles, hotel rooms, utility bills, and insurance coverage . The Ministry expected that the tax measure would generate billions of baht in cash flow to the national economy. If the *Shop Dee Mee Kuen* measure is approved by the Cabinet, the measure will start from 1 January to 15 February 2023.

In order to stimulate the purchase of residential property in the market, the Ministry of Finance is expected to propose extending reductions in property transfer and mortgage fees for the purchase price not exceeding 3 million baht for another one year.

There is also the proposal of the Treasury Department on a land rental fee for farmers.

In conclusion, various measures are expected to be approved by the cabinet to stimulate economy in Thailand during the year 2023.

Tax Incentives for donation made to educational institutions

On 27 December 2022, the Cabinet approved the tax incentive, allowing double tax deduction to the donors who donate to the following educational institutions:

- 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 or specialized organizations such as Asian Institute of Technology (AIT); and
- 5) Higher Education Institutions from abroad which were approved by the Educational Management Development Committee.

Please be noted that e-donations made to the above educational institutions between 1 January 2022 and 31 December 2024 can be used as the deduction allowance. In addition, to make it easier for taxpayers, the Revenue Department of Thailand (the "RD") has provided a list of educational

institutions announced by the Ministry of Education that can be used for tax deduction on its website.

PDPA

The Criteria and Process for reporting a personal data violation

The Notification of the Personal Data Protection Commission re: the criteria and process for reporting a personal data violation B.E. 2565 (A,D, 2022) (the "Notification") has been enforceable on 15th December B.E.2565 (A.D.2022) onwards, which consists of the main issues as follows:

The data controller shall notify the Office of the Personal Data Protection Commission (the "Office"), or the data subject, in event of the violation of the security measures resulting in loss, access, use, modification, amendment or disclosure of the personal data without authority, which critically affects the rights and the freedom of the data subject, regardless of considering cause of such violation. Any violation of personal data occurred can be a result of confidential breach, integrity breach, or availability breach. In any case of the violation of personal data, the data controller shall notify the violation to the Office within 72 hours from acknowledgement of such violation, unless the violation does not affect the rights and freedom of the data subject.

In addition, in case the violation has been identified, the data controller shall undertake its responsibilities to preliminarily assess the reliability of such report, and measure the potential risk affecting rights and freedom of the data subject. If it is regarded as a high potentiality of risk, the data controller shall immediately

implement protection, suspension, or solving such violation. Moreover, the data controller shall notify the data subject together with the measures for the remedy from the damage caused by such violation.

In the event that a report is notified after 72 hours, the data controller may request the Office for consideration of exclusion from faults concerning the delay, by declaring the important reasons causing such delay, by not exceeding 15 days. Nonetheless, by declaring such violation to the Office by the data controller, it is not considered as an excuse of the exclusion of duties or liabilities of the data controller, under any other special laws. However, the responsibility of the data controller to notify the Office regarding the violation of personal data may be exempted, only if the data controller can prove that the violation of personal data does not affect the right and the freedom of the data subject, or the violated personal data cannot identify the data subject, or the personal data is not in the condition that is ready to be used due to sufficient technological measures.

In certain businesses, if the data processor acts on behalf of the data controller, or have the common agreement with the data controller, to operate its business pursuant to the personal data protection law, the data controller shall identify in the agreement that the data processor must undertake the responsibility to notify the data controller of the violation of the personal data within 72 hours since the data processor acknowledges such violation.

SOCIAL SECURITY

New SSO regulation requires the employers to register its employees for the social security coverage

The Social Security Office ('SSO') warned the employer to strictly comply with the new regulation otherwise, the employer shall be subject to the penalties.

Before the issuance of the new regulation, most employers tend to save the costs and time of not registering the migrant workers on a temporary work contract with the SSO and keep renewing the temporary work contract instead of hiring full-time workers. However, from 8th November 2022 the SSO makes it mandatory for the employers to register the migrant workers with the SSO.

The new regulation would therefore provide those migrant workers to have access to proper treatment and compensation in the event of an injury. This new regulation applies only to the group of migrant workers who come from neighbor countries. The benefits provided by the new regulation covered by the SSO relate to injury, sickness, maternity, disability, old-age benefits, and unemployment. The change in the regulation would make it easier for migrant workers to access to health care and other benefits. However, there are some types of work including housework, farming, livestock raising, and fishing that are not required to register with the SSO.

DIGITAL ASSETS

SEC Thailand implements stricter rules for digital assets

The Securities and Exchange Commission of Thailand (the "SEC") is monitoring new potential risks, improving regulations to be more effective in supervising the digital assets industry, and leveraging investor protection in areas such as digital assets advertisement, investors' asset protection etc. to be in line of the digital-asset-related regulations with other foreign countries.

For examples, in the US, the digital assets regulators have enforced disclosure requirements to tackle illegal acts involving deceiving digital assets advertisement while in the UK, Singapore, and Japan, the regulators have announced the application of the Distributed Ledger Technology (DLT) or Blockchain in recording the digital asset transactions and its details, aiming to create a highly secure and reliable platform for transferring assets and performing business transactions.

The most recent requirements set by the SEC are specifically in 3 areas as follows:

1. Prevention of the Deceptive Advertisement on the Cryptocurrency

In these days, most digital asset advertisements around the world contain misleading information without disclosing the information required by the domestic laws. Without complying with the regulations, such advertisements present only positive side of the investment in which it excludes appropriate warning regarding the investment risk, even though the fluctuation rate of the cryptocurrency is significantly high. In addition, lately various digital asset business providers start to hire celebrities and influencers to promote the digital assets investment. However, they do not entirely disclose the information in their advertisements as required to inform the investors. Consequently, this inappropriate advertising of digital assets leads to high investment risks for investors.

In addressing aforementioned issue, the SEC have amended the requirements for advertising of the digital asset business providers to enhance the investor protection, and create the consistency with international standards, which came into effect on 1st September 2022 . The requirements have their essences as follows:

- The advertisement of the cryptocurrency shall not be false, exaggerating, distorting, concealing, or misleading in its significance;
- the digital asset business providers, intending to do advertising, shall inform the SEC regarding details and expenses of advertising, including details of hiring bloggers, influencers, according to the criteria, methods, conditions, and time is of the essence, as prescribed by the requirements ;
- the advertisement shall include the investment risk warning. The form of such advertisement must be clear, noticeable, and completely provides useful information for making investment decisions. Moreover, if the positive information, or an opportunity to receive benefits is presented, the negative information or the investment risk shall also be presented to create a balanced view;
- the advertisements of cryptocurrency can merely be presented on the official channel of the digital asset business providers. This is to prevent the cryptocurrency advertisement that having high fluctuation rate, to approach the public at large, and prevent the impulsive buying. Meanwhile, the advertisement related to services of the digital asset business providers can still be presented to the public and on other channels;
- the digital asset business providers shall monitor the advertisers, or advertising promoters, including affiliated companies, business-related person(s), and the main characters appearing in the advertisements to comply with the requirements ; and

- the assignment of the introduction of the broker agent (IBA) of the digital asset business providers of the cryptocurrency is cancelled , while in the digital token service, the IBA assignment is still allowed.

However, the new requirements are retroactive to the advertisements that had been launched before its effective date. Therefore, the digital asset business providers shall improve or amend their advertisements within 30 days from the effective date of the requirements to create compliance of the advertisements with the new requirements.

2. Prohibit the use of Digital Assets as a means of payment

Nowadays, some digital asset business providers run their businesses in a way of facilitating the payment made by using digital assets. The use of digital assets as a means of payment for goods and services potentially affects financial and economic stability as a whole, causing risks to investors and businesses, such as loss of value due to the fluctuation in cost, cybercrimes, leakage of personal data , and money laundering.

The SEC has therefore implemented the requirements , which came into effect on 1st April B.E. 2565 (2022), as an instruction for the digital asset business providers, including trading centers, brokers, traders, consultants, and fund managers, to prohibit the use of digital assets as a means of payment, having its cores as follows:

- The digital asset business providers shall not provide service or take action which can be considered as a support or encouragement of the payment made by the digital assets as follows:
 - Advertising, convincing, or presenting that the digital asset business providers shall

accept the payment made by the digital assets;

- Preparing system or amenities to facilitate the payment made by the digital assets;
 - Providing digital assets wallet service to support the payment made by digital assets;
 - Providing Thai-Baht money transfer service from the customers' account to others' account, regardless whether the receiving account is derived from the trade of digital assets, or is a Thai-Baht account;
 - Providing digital assets transferr service from the customers' account to other accounts, not the customers' account, for the purpose of using the digital assets as a means of payment; and
 - Other services considered as a potential support of goods and services payment made by the digital assets.
- In the event that the digital asset business providers inspect the customers using the account opened for digital asset trading to make goods and services payment, the digital asset business providers shall warn the customers concerning misuse of the account, and shall implement the temporary suspension, cancellation of the services, or accordingly , take any other actions.

However, the new requirements are retroactive to the digital asset business providers who have operated their businesses prior to, or on the effective date of the new requirements , thus the digital asset business providers shall comply with the new requirements within 30 days from the effective date of these new requirements .

3. Distributed Ledger Technology (DLT) or Blockchain

In Thailand, the regulator set up a working committee consisting of relevant government agencies and private sector representatives to do research and suggest ways to improve the laws to adapt to the changing environment and growing risks of the digital assets. Amid the recommendations is the use of Distributed Ledger Technology (DLT) in the business sector.

However, although there are recommendations to apply the DLT in Thailand, which consist of the feature of data centralization storage, increasing difficulty for data to be tempered with and the ecosystem of the digital assets, the DLT is still in the progress of improving in order to give the most efficient implementation to the digital infrastructure.

Classifying Digital Token Market in Thailand

The Revenue Department (“RD”) has a thought to utilize rules in order to classify the types of digital tokens. This classification has the objective to support the movement of digital tokens in the market developments. By doing this, it will reduce problems to the token market development as some type of digital tokens may not be subject to the value-added tax (“VAT”). On the other hand, in case any investor sells digital tokens which are classified as stocks, such an investor shall be subject to taxes on capital gains. While the investors shall also be subject to taxes in case of selling digital tokens which are classified as bonds.

Due to the fact that there are variety types of digital tokens including investment tokens and utility tokens, thus the Office of the Securities and Exchange Commission (“the Office of the SEC”) is currently working on improving the digital asset governance to be in accordance with rapid developments within digital tokens market. This is done by setting up a working committee that

consists of relevant government agencies and private sector representatives to gain knowledge and suggest ways in improving law and regulations to be more updated with the increase of risks for digital assets and the change of environment. The digital tokens have the ability in determining the rights of the holders for joint investments in projects. The tokens also have the perks in obtaining services and products in the contracts between the parties.

The government is also giving out privileges for the transfer of cryptocurrencies on digital asset exchanges that are licensed to be exempted from payment of VAT. This privilege also allows investors to reduce the total loss from the sales of the cryptocurrencies from the total gains from the sales of such properties before paying tax.

COVID-19 MEASURES

Thailand’s planning measure for welcoming Chinese travelers

Due to the fact that China is planning to open its borders in early January 2023. and lessen its travel restrictions for both departures and arrivals, however, China is experiencing the covid outbreak . In this relation some countries are implementing policies and regulations . For example, the Ministry of Health of Malaysia stated that travelers should get a booster dose and take covid vaccination . The top five destinations were Japan, South Korea, Hong Kong, Singapore, and Thailand. Therefore, Thailand is preparing effective measures to take care of foreign tourists especially, those from China. The Minister of the Public Health of Thailand said that Thailand will treat Chinese travelers in the same way as Thailand treats travelers from other countries in case of preventing Covid-19. Currently, it is proposed by the Ministry of Public health that to enter Thailand

that Chinese travelers should be required to present Covid-19 vaccination certification (at least 2 doses), and, if not, purchase the health insurance coverage. In addition, they are recommended to wear mask during their stay in Thailand. However, it should be noted that these mentioned measures would be approved by the Ministry of Public Health, the Ministry of Tourism & Sports, and the Ministry of Transport on 5th January 2023.

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

