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Legal Developments in Thailand

Thailand Legislation Update

Criminal Liability of Directors

On 11 February 2017, the Act Amending the Law on the Criminal Liability of Representatives of Juristic Persons B.E. 2560 (2017) (the “Act”) was published in the Royal Gazette and became effective on the following day. The Act removes the presumption on the joint criminal liability of the representatives of juristic persons contained in 76 Acts. The rationale of the Act is to provide legal consistency with the decisions of the Constitutional Court which invalidated the legal presumption on the joint criminal liability for managing directors, managers or any persons responsible for the operation of the juristic persons.

The 76 Acts generally provided that, where the offender to be punished is a juristic person, the managing director, the managing partner, or the person who is responsible for the operations of the said juristic person, shall also be punished as provided for such an offence, with some acts including language that this would not be the case if such person could prove that they had no knowledge of the offence, or they did not give consent thereto, or they had proceeded reasonably according to the circumstances to prevent an occurrence of such an offence. This had been a controversial provision on the basis that it was inconsistent with the presumption of innocence and was invalidated by the decisions of the Constitutional Court.

The Act provides new language for each of the repealed provisions contained in the 76 Acts in that, in case of a criminal offence committed by a juristic person, if the offence is committed by an order or an act of the director or manager or any person responsible for the operation of such juristic person, or if such person has a duty to order or to act but omits to order or to act resulting in the offence being committed by the juristic person, such person shall also be punished for the offence.

Even though similar or near identical provisions have been repealed, for reasons unknown, the Act does not repeal Section 115 quarter of the Customs Act, which states that “*In case the offender who is to be punished under this Act is a juristic person, the managing director, the managing partner, or the person who is responsible for the operations of the said juristic person, shall also be punished as provided for such an offence unless such person can prove that he had no knowledge of the offence, or did not give consent thereto or had taken an appropriate action to prevent such offence.*”

Therefore, it is important to see what will happen to Section 115 quarter of the Customs Act and any similar provisions which remain unrepealed by the Act.

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Computer Crime Act

The amendments to the Computer Crime Act will become effective on 24 May 2017. Under the amendments, the powers of investigation and interrogation granted to the relevant officer have been extended to include powers of investigation into offences involving the use of computer systems, computer data, or computer data storage equipment under any laws (whereas previously the powers were limited to investigation into offences under the Computer Crime Act only). The officer would also be empowered to request the court to issue an order prohibiting the dissemination or removal of certain computer data from computer systems (for example, computer data that infringes on the intellectual property rights of others or that is contrary to public policy).

The amendments also introduce a new offence for sending disturbing computer data or electronic mail to another person without providing the recipient with an option to un-subscribe, and a requirement for a service provider to retain computer traffic data for up to 2 years from the date that the data enters into the computer system. In addition, the amendments also seek to provide a safe harbour provision for service providers, where the service provider would not be penalized if it can prove that it has stopped the dissemination of, or removed the computer data from the system (but this protection will only be available upon the issue of the relevant subsidiary legislation). Other amendments to the Computer Crime Act include the requirement that the offender must be found to have been dishonest or deceitful to be liable for the offence of entering fake or false computer data into a system in a way that is likely to cause damages to other persons or the public.

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Amendment of Investment Promotion Act and New BOI Laws

The latest amendments to the Investment Promotion Act 1977 (BOI Act) became effective on 25 January 2017. They include the following:

- Provisions granting import duty exemptions for a research and development business, and corporate income tax exemption for up to 13 years for a business involved in advanced technology and innovation and research and development business.
- For businesses that are not entitled to corporate income tax exemption, a provision granting the right to deduct up to 70% of the investment injected into the promoted business, from the net profits of any one or more years within 10 years from the date of the first income derivation.
- For businesses that are entitled to corporate income tax exemption, an exemption from tax on dividends which are derived from the promoted business and paid within 6 months after the lapse of the tax exemption period.

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Relaxation on foreign shareholding ratio and board limit requirements for life and non-life insurance companies

Two Notifications (Notifications) were issued by the Ministry of Finance (MOF) for life and non-life insurance businesses, and became effective on 18 January 2017. The Notifications permit a life/non-life insurance company to apply for the MOF's approval in case it wishes to have (i) more than 49% of its total issued shares with voting rights held by non-Thai nationals, or (ii) more than 1/2 of its directors comprise of non-Thai nationals. Under the existing laws, at least 75% of the total issued shares with voting rights must be held by Thai nationals, and at least 3/4 of the directors must be Thai nationals (although permission may be sought for a foreigner to hold up to 49% of the total issued shares, and more than 1/4 but less than 1/2 of its directors to be foreigners, upon request of the insurance company).

The company must satisfy certain qualifications under the Notifications in order to apply for the MOF's approval (for example, experience in the insurance business for at least 10 years, and have a sufficient Capital Adequacy Ratio (CAR) at a percentage required by the Office of the Insurance Commission). If the MOF's approval is granted, the company must comply with certain other requirements set out in the Notifications (e.g., to maintain its total capital available of not less than THB 4,000,000,000 throughout the period of its operation).

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Increase in Minimum Daily Wage

The National Wage Committee issued a notification to increase the minimum daily wage in 69 provinces, which became effective on 1 January 2017. The new daily rate of Baht 310 applies to Bangkok, Nonthaburi, Pathum Thani, Nakhon Pathom, Samut Prakan, Samut Sakhon, and Phuket. There are new daily rates of Baht 305 and Baht 308, which apply to 62 provinces, with the rate for the remaining 8 provinces remaining unchanged at Baht 300 per day.

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National Legislative Assembly Approves Amendment to Trade Competition Act

On 24 March 2017, the National Legislative Assembly approved a comprehensive amendment to the Thai Trade Competition Act, which is expected to substantially increase enforcement actions against anti-competitive conduct in Thailand. The amendment will need to be published in the Royal Gazette to become effective; however, there is currently no confirmed date for such publication.

Based on the latest available information, certain key changes include:

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- **Merger Control Language:** If the merger will create a monopoly as defined, pre-approval is required; however, if it will only lessen competition in the market, post-notification will be sufficient. This provision changed multiple times during the drafting and consideration process, with many business operators raising concerns about potential confidentiality implications arising from a pre-merger notification, particularly relevant for listed companies as news leaks would have disclosure consequences given the information would likely be regarded as price sensitive for the market.
- **Clarification of Restrictive Agreements language:** The prohibition against anti-competitive agreements retains the principles of Section 27 of the current Trade Competition Act, while clarifying certain types of conduct and also describing certain exemptions, such as in the case of parent and subsidiary arrangements, R&D, as well as franchising and licensing agreements.
- **Reduced Exemption for State Enterprises:** Whereas state enterprises are completely excluded from the current Trade Competition Act, under the amended act they will be exempted only in limited circumstances.

If you would like more information on the amendments to the TCA, please contact:

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National Council for Peace & Order (NCPO) Announcement Makes Changes to Companies Laws

On 3 April 2017, the Royal Gazette published Order of the NCPO No. 21/2560 re Amendment of Law to Facilitate Business Operation (“**Order**”). The Order amended key provisions of the following four laws: (i) Civil and Commercial Code (“**CCC**”); (ii) Public Limited Companies Act (“**PLC Act**”); (iii) Labour Protection Act; and (iv) Bankruptcy Act. The Order was issued by virtue of Section 44 of the Interim Constitution of the Kingdom of Thailand.

Interestingly, the rationale of the amendment references the World Bank’s report identifying Thailand as #46 out of 190 countries for ease of doing business, which prompted the NCPO to introduce measures to improve Thailand’s competitiveness.

Changes that will be particularly relevant to operators of companies in Thailand include the following:

CCC

- The articles of association of the company may include the method for dispute resolution between directors or shareholders (S. 1108).
- Only one director is required to sign the share certificate – previously the seal was also required (S. 1128).

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- The dividend must be paid within 1 month from the date of approval by the shareholders' or Board of Directors' meeting – previously, no time period was specified (S. 1201).
- There are additional reasons for the court to order dissolution of the company i.e. other reasons which result in the impossibility of the company to exist (S. 1237).

PLC Act

- The right of the shareholders to request the Board of Directors to call a shareholders' meeting has been amended to be one or more shareholders with aggregate shares of not less than 10% of the total issued shares. If the Board of Directors does not arrange the shareholders' meeting as per the request within 45 days from the receipt of the request, such shareholder(s) may call for a shareholders' meeting by themselves (S. 100).

Bankruptcy

- Upon the grant of a stay due to the court's acceptance of the petition for rehabilitation, the secured creditor can now enforce the collateral after the lapse of 1 year from the court's acceptance of the petition; previously the secured creditor was required to seek a court order to enforce collateral (S. 90/12).
- The resolution of the creditors' meeting to approve the plan no longer needs special resolution (S. 90/46).
- Publication of court order or judgement by electronic means is allowed as an alternative for publication only in newspaper (S. 148/1).

Labour Protection Act

- The employer is no longer required to submit the work rule to the authority; it is required only to announce and maintain the work rule at the business place (S. 108).
- The amendment of the work rule is also not required to be submitted to the authority; the employer is only required to announce the amended version within 7 days (S. 110).

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Other Useful Thailand Resources

Practical Law

Employment and Employee Benefits in Thailand: Overview

Authors: Rajah & Tann Partners Sui Lin Teoh, Supawat Srirungruang, and Saroj Jongsaritwang, and Senior Associate Yingrak Treesaranuwattana, have drafted the Thailand chapter, which forms part of the Practical Law global guide to employment and employee benefits law. From Practical Law:

“The Q&A gives a high level overview of the key practical issues including: employment status; background checks; permissions to work; contractual and implied terms of employment; minimum wages; restrictions on working time; illness and injury; rights of parents and carers; data protection; discrimination and harassment; dismissals; redundancies; taxation; employer and parent company liability; employee representation and consultation; consequence of business transfers; intellectual property; restraint of trade agreements and proposals for reform.”

The Q&A can be downloaded in PDF format at: <http://uk.practicallaw.com/8-617-6522?q=thailand>.

Practical Law

International Trade and Commercial Transactions in Thailand: Overview

Authors: Rajah & Tann Partners Surasak Vajasit, Melisa Uremovic, Pakpoom Suntornvipat and Supawat Srirungruang, with the assistance of Senior Associate Suwapak Jaru-ampornpan, have drafted the Thailand chapter, which forms part of the Practical Law International Trade and Commercial Transactions Global Guide. From Practical Law:

“The Q&A covers key matters relating to sale of goods contracts, including rules on formation, price and payment, delivery, passing of title and risk, variation and assignment, enforcement and remedies, exclusion of liability, choice of law and jurisdiction, and arbitration. It also provides an overview of the rules governing storage of goods, imports, trade remedies, exports and international trade restrictions.”

The Q&A can be downloaded in PDF format at: <http://uk.practicallaw.com/5-617-8810>.

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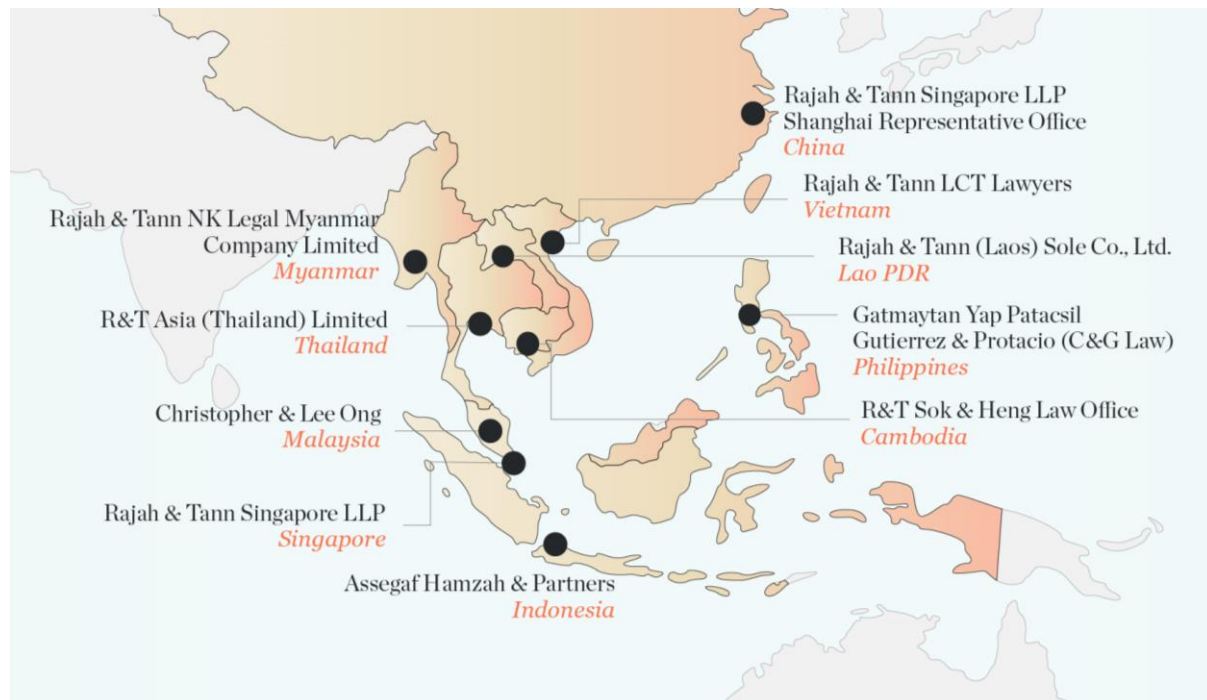
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