



Data Privacy Law in Thailand

As existing laws in Thailand provide protection to data in limited circumstances and only certain types of data get protection. It is come to our attention that without clear regulations in place for enforcing data privacy law, there is uncertainty among private businesses on handling their personal data. For resolving this situation, the Ministry of Digital Economy and Society has published Personal Data Protection Bill for public hearing and public consultation.

The Bill intends to protect personal data and also safeguard public interests at the same time. Mainly, the Bill states that collection, usage or disclosure of personal data without the consent from a data owner is prohibited, also a data controller must inform the data owner on the purpose that data is collected. Collected personal data can be used or disclosed for the approved purposes only. The Bill also provided exception where the data owner expressly consented otherwise, any processing of personal data for marketing purposes is not permitted.

Ideally, The Personal Data Protection Bill will provide higher standards for the protection of personal data to be in line with the Organization for Economic Co-operation and Development (OECD) Guidelines. In addition to this Bill, some specific issues related to data protection are as follows:

1. **Electronic Marketing:** Currently, there is no particular law that restricts the use of personal data for electronic marketing.
2. **Online Privacy:** Presently, there is no provision under the relevant laws and the Bill that specifically prohibits or regulates the placing of cookies on users' computers.
3. **Computer Crime Act B.E. 2550 (2007),** imposes punishments for specific computer data alterations.

Cryptocurrency Laws in Thailand

As of today, Cryptocurrency is one of the most interesting issue in banking and finance areas. First of all, to be explicitly, Cryptocurrency may be call as "digital currency". Bitcoin is one type of such currency. The fundamental objective of Cryptocurrency is to resolve the limitation of physical Cryptocurrency or "cash" as we know. It should be note that the electronic payment system (E-Payment) is one form of transferring physical currency, not digital currency.

Cryptocurrency is a digital money system designed to make transactions super secure. The most well-known, Bitcoin, was created in 2009 as a form of digital money and world payment system. As mentioned, the digital currency is meant to resolve any flaw of the physical one by the 3 key characteristics described as follows:

1. **Trustless:** The systems governing cryptocurrencies are trustless, meaning no third party is involved. They replace trust with verification; a peer-to-peer network where assets are fully possessed and controlled by each individual and sent directly to one another without the permission and control of a governing authority.
2. **Immutable:** By its very nature, blockchain technology makes cryptocurrency transactions immutable. They cannot be undone, reversed, double-spent, hidden, or altered. There can be no cooking of the books for foul play or human error, making cryptocurrency infinitely more transparent than plain old electronic bank money.
3. **Decentralized:** The creation of new cryptocurrency units are hardwired into the system of a cryptocurrency, unlike a nation's government (or central authority) that can alter the value of fiat by pumping new currency into circulation or altering interest rates.

The characteristic of digital currency is viewed to be good investment, especially stable currencies like bitcoin. In fact, bitcoin was the best performing currency in 2016. It beat the performance of gold, nifty50 etc. It is being considered as a safe haven asset which is touted as 'digital gold'.

However, it is quite natural that everything is not perfect, as there is some disadvantage of digital currency that investor must acknowledge:

1. Adoption: Levels of adoption for cryptocurrencies are still low, although steadily growing. If the main benefit of all currency is the ability to buy and sell with it, then cryptocurrencies currently fall well short of traditional currencies.
2. No central bank: Although flawed, the central banks (like the Bank of England or the Federal Reserve) helps guarantee the value of their currency, to withstand financial panics, because the currency can always be used to buy goods to its market value. Without a central bank, cryptocurrencies can be more susceptible to market volatility, which may benefit currency traders who can profit from day-to-day fluctuations in value.
3. Growth limit: Although the ability of central banks to increase the supply of money in the economy can reduce its value, it can help them to stimulate growth. Because cryptocurrencies offer a fixed number of units, there is no scope for governments to use them to help ignite a subdued economy.
4. Moral Neutrality: Cryptocurrencies exist without political allegiance; they can, therefore, be used for goodness or illness and their creator has no recourse to prevent criminal activity. In contrast, the US Foreign Corrupt Practices Act (FCPA) permits US authorities to police international business transactions using the Dollar.

As all investments carry some degree of risk, investors must be willing to accept a given level of risk before committing to invest.

Thai government has acknowledged the lack of digital currency laws. On March 13, 2018 the government

approved in principle of 2 Bills for regulating what they called "Digital Assets" described as follows;

1. Bill on the amendment of Revenue Code is prepared for collecting tax from "Digital Assets".

Under the Bill section 39 of the Revenue Code "Digital Assets" should be amended to define 1) Cryptocurrency 2) Digital Token including Assets in Electronic form. The main part of the law is meant to indicate that all of income made within digital assets shall be subject to 15% withholding tax.

2. Draft Royal Decree on Digital Asset Business Operation, the draft is meant to manage and regulate digital asset business by imposing registration procedure by a government agency. Where the middle man, broker and dealer are subject to register themselves for government regulation.

Both Bills were expected to be issued in April, 2018, we shall provide any further updates, if any, to you on next legal insight.

A Bill on Assets underlying a Right

According to difficulties resulting from the Civil and Commercial Code and Lease of Real Estate for Commercial and Industrial Purposes Act B.E. 2542, there are several limitations impeding investors from doing business in Thailand such as limited duration of real estate lease, sub-transfer of lease holder's right, transfer of lease holder right due to legacy, as well as right to use and maintain the real estate.

Therefore, if a bill on assets underlying a right is enacted to be an Act, in reference to the bill, these obstacles will be resolved and significant changes in regard to lease of real estate will be as below;

1. Only real estate i.e. land with title deed and condominium units are permitted to be registered with a competent government agency by the owner of an asset underlying a right.

2. Any juristic act in relation to the real estate requires change of registration with the competent government agency.
 3. The asset underlying a right can be leased, sold, transferred, descended, or used as a security by means of mortgage for performance. Mortgage provisions in the CCC then applies.
 4. Lease holders may modify, add, build any building or other construction without permission of the owner of such real estate unless otherwise provided in the contract. Nonetheless, that asset arising out of the changes will become an asset of the real estate owner.
 5. If any peril occurs to the real estate, the lease holder may exercise his right to protect such real estate from the peril.
- The minimum wage rates of three hundred and eighteen (318) Baht per day shall be applied to an employee in the following provinces such as Samut Songkram, Chantaburi, Nakhon Nayok, and Kalasin; and
 - The minimum wage rates of three hundred and fifteen (315) Baht per day shall be applied to an employee in the following provinces such as Kanchanaburi, Nan, Phitsanulok, Utharadit, Buriram, Loei, and Prachuap KhiriKhan.

It is provided that an employer is obliged to pay wages at the rate of no less than the minimum rate specified in this Notification.

The Minimum Wage Rate as indicated in this Notification shall become effective from 1 April 2018 onwards.

New Minimum Wage Rates Announced

On 19 March 2018, the Notification of the National Wage Committee on Minimum Wage Rate (No. 9) was announced and published in the Government Gazette No.135 (63 Ngor).

According to the mentioned Notification, the minimum wage rates slightly varied depending on the difference of the areas. Key examples of minimum wage rates are as set forth below:

- An employee in Chonburi, Rayong, and Phuket shall be entitled to the minimum wage rate of three hundred and thirty (330) Baht per day.
- An employee in Bangkok, Nonthaburi, Pathum Thani, Nakhon Patom, Samut Prakarn, Samut Sakorn, and Chachoengsao shall be entitled to the rate of three hundred and twenty-five (325) Baht per day.
- The minimum wage rates of three hundred and twenty (320) Bath per day shall be applied to an employee in the following provinces such as Chiangmai, Khon Khan, Krabi, and Ubon Ratchathani.

Eastern Economic Corridor (EEC) Bill would become EEC Act

On 8 February 2018, the National Legislative Assembly (“NLA”) of Thailand approved the Eastern Economic Corridor Bill which will become law after its publication in the government gazette. (the “EEC Act”).

Under this Act, areas regarded as the Eastern Economic Corridor could be, if necessary and by virtue of a Royal Decree, expanded to cover some provinces closing to Chachoengsao, Chonburi, and Rayong, says, Prachinburi, Srakaew, and Chantaburi.

In addition, the EEC Board, of which the Prime Minister is the Chairman, has duties to prepare the EEC Development Policy, the land-use Plan, and the infrastructure development plan. The EEC Development Fund will also be established for community development and educational in the EEC provinces.

The EEC Act also includes the following incentives for any businesses operated in the EEC areas:

1. A right to own land and other immovable properties by any foreigner;
2. A right to take foreigners into and reside in the Kingdom of Thailand; and
3. A right to have exemption or deduction of taxes and duties.
5. To support the competition between the SET and other securities trading providers, to expand types of listed securities on the SET including making a balance in the Securities depository business;
6. To establish the Capital Market Development Fund (“CMDF”) to be an independent organization;
7. To increase quality, clarity, and transparency of the operations in the capital market by amending provisions concerning the business operations of the SEC Board, the SEC Office, and the Capital Market Supervisory Board; and
8. To amend the penalties and fines to be stiffer.

Tax exception for an investment promotion may be 8 years, 13 years and up to 15 years.

Bill on Amendments to Securities and Exchange Act to be complied with Global Standards

According to the Announcement of the Ministry of Finance No.32/2561 dated 28 February 2018, the Cabinet approved in principle on 27 February 2018 Bill on Amendments to Securities and Exchange Act A.D. 1992 on the improvement of the capital market of Thailand to be complied with the global standards. The key concepts of this Bill are as set forth below:

1. To amend definitions of securities, the minimum registered capital, and the requirements for securities companies to be sufficiently flexible for financial technology such as FinTech and Digital Currency;
2. To empower the Office of the Securities and Exchange Commission (“SEC Office”) in organizing shareholders’ meeting of a listed company in the event that any operation of the listed company is tended to be harmful to the public and the regular method could not be applied;
3. To improve governance of the mutual fund by which asset management companies are obligated to faithfully and carefully manage the mutual fund, to amend methods for handling the rights of the unitholders to be more protected and balanced;
4. To improve governance of the Stock Exchange of Thailand (“SET”) to be more transparent and comply with global standards and the good governance concept;

Thereafter, the Bill would be considered in details by the Office of the Council of State and to be returned to the cabinet which would submit the Bill to the National Legislative Assembly respectively.

New Rates of Fees for Registration

The Ministerial Regulation Prescribing Rates for Registration, Inspection of Documents, Certified Copies of Documents, and Other Fees in Connection with Partnerships and Limited Companies (“Regulation”) was finally published in the Royal Gazette on 20 April 2018 and became into effect on 21 April 2018. The Regulation revises the governmental fee rates to be in line with the World Bank recommendations and ensure their greater appropriateness since such rates of fees have been in force for a long period of time and become outmoded in view of economic circumstances of the present time.

According to the Regulation, the registration fees for partnerships and limited companies are at flat rates. To be more specific, please see the new fee rates as set forth below:

1. Registration of a partnership - 1,000 Baht
2. Registration of the memorandum of association of a limited company - 500 Baht
3. Registration of the formation of a limited company - 5,000 Baht
4. One or more than one matter of the following registration: Registration of an alteration of the

memorandum of association of a limited company,
Registration of an alteration of articles of association
of a limited company, Registration of appointment
of new directors, Registration of an increase or a
reduction of the capital of a limited company,
Registration of a dissolution of a company and
Registration of other matters - 500 Baht per time

Should you have any question, please do not hesitate to
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