



Trade Competition Commission issued the Notifications on Food Delivery Digital Platform Operators

The Notification of the Trade Competition Commission regarding guidelines for consideration of unfair trades between digital platform service providers for food delivery and restaurant business operators (the “Notification”) was published in the Royal Gazette on 23 November 2020 and became effective on 24 December 2020.

The Notification provides that a digital platform service provider for food delivery may be considered as causing damage to the restaurant business operators if any of the following occurs:

1. Collecting any expenses, considerations, or other benefits, which are unfair covering;
 - (i) Collecting a commission fee or gross profit in the increasing rates with unreasonable ground or in different rates among restaurant business operator in the same food category without reasonable ground;
 - (ii) Collecting an advertising fee for sale promotion paid by a restaurant business operator and that operator does not receive benefits as mutually agreed without any reasonable ground;
 - (iii) Collecting a special fee for marketing promotion without reasonable ground; and
 - (iv) collecting any expenses, considerations, or other kind of benefits, which have never been collected before without reasonable ground;
2. Determination on trade terms and conditions limiting or impeding other business operators without reasonable ground, such as , exclusive dealing;
3. Use unfair market power or strong negotiation power, for examples, rate parity clause, credit term, change terms and conditions and/or termination of contract without prior notice.

In case of any violation of the Notification, the food digital platform operator may be ordered by the authority to halt, suspend, or solve the damaging actions. The victim can also claim for compensation. Moreover, the administrative fine will possibly be imposed on that food digital platform operator.

Bill of the Amendment of section 301 under the Thai Penal Code regarding the offense of miscarriage. (“Bill”)

Currently, the Bill is approved by the Cabinet resolution of 3 March 2020 and is in the process of public hearing from 11 November to 11 December 2020 and expected to be completed.

The main purpose is to determine the gestational age for a woman's offence causing herself to be aborted or allowing the other person to procure the abortion for herself, protecting and balancing the rights of fetus and rights of the pregnant woman.

In addition, the Bill adds an exception to the condition of miscarriage, for the purpose of covering necessary and appropriate aspect in order to have an abortion or to terminate a pregnancy for the woman. The exception shall be committed by a medical practitioner in accordance with the criteria of the Medical Council in the following cases, the offender is not guilty under section 301 of Thai Penal Code.

- (1) It is necessary for the sake of the physical health and mental condition of such woman;
- (2) It is necessary for the sake of the grievous bodily harm or grievous mental harm of a child
- (3) A pregnant woman due to a sex offense.
- (4) A woman who is not more than twelve weeks pregnant confirms the termination of the pregnancy. "

Environmental Impact Assessment (“EIA”)

Enhancement and Conservation of National Environmental Quality Act B.E. 2535 of Thailand

(“Environmental Quality Act”). *Section 48* of the Environmental Quality Act, designates that the Minister of Natural Resources and Environment, with the National Environmental Board’s approval has power to issue the notification designating projects or businesses which are required to submit an EIA report.

In addition, the procedures and conditions on providing an EIA report may be different due to categories and sizes of projects or businesses. However, an EIA report shall consist of the following information: (i) the subject matter of details of the project or the business; (ii) Current environmental situation; (iii) Assessment of alternatives that can be operated; (iv) Assessment of environmental impacts which may directly or indirectly occur due to the operation of the project or the business ; (v) Public participation in the EIA; (vi) measures to prevent and rectify such impacts and to compensate and remedy injuries and damages.

Under Section 50 of the Environmental Quality Act, the authorities shall suspend an order to grant permission to implement the project or the business until the EIA report is approved or deemed approved from the expert committee, appointed by the National Environmental Board, and they receive a letter of notifying findings of EIA report from the Office of Natural Resources and Environmental Policy and Planning or the state agency assigned by the National Environmental Board to act on its behalf.

Under Section 51/3 of the Environmental Quality Act, when the expert committee gives its opinion , the authorities shall bring the measures proposed in the EIA report to prescribe as conditions in giving permission or renewing a license. Such conditions shall be deemed as required by law in that particular matter.

Under Section 51/5 of the Environmental Quality Act, for the benefits of monitoring, inspecting, and developing the system of EIA, the operator shall provide an implementation report of measures required in the EIA report and submit it to the authorities who granted permission at least once a year. However, in case where it appears that the operator avoids or does not proceed with the measures required in the EIA report which are the conditions for granting permission or renewing a license under Section 51/3, the authorities may enforce the operator to correctly implement such measures.

This shows that if the operator of the project of the business required to conduct an EIA report does not conform to the regulations, there will be some enforcement that could significantly impact the project or the business .

Notification of the Prime Minister’s Office re; prohibit the sale of alcohol through electronic platforms (“Notification”)

The Notification has been published in the government gazette since 7 August 2020 and became effective on 7 December 2020. This is to prohibit the sale of alcohol through electronic platforms, to mitigate the effects of alcohol as well as preventing the young generation to have easily access to alcohol as to the evolution of the technology of all times. With the development of the technology, the operators and the merchants take an advantage to advertise the products being alcoholic beverages online. In this case, it is difficult to monitor and control the date, time, place and the person in accordance to the laws. Therefore, the Notification provides for legal measures to regulate the sale of alcohol to be in compliance with the current circumstances.

Under the Notification, it is stated in three main provisions :

1. No one shall sell alcoholic beverage or any services in connection with the sale of alcoholic beverage by electronic means to the customer directly or any act in the manner of soliciting to purchase, offering for sale, sales of goods or services to the customer through marketing or in form of electronic communication (indirectly);
2. The notification shall not apply to the case of the purchase of and make payment of alcoholic beverages though electronic means in shops, restaurants, or any places serving alcohol; and
3. The notification shall come into force after the expiration of ninety days from the date of the publication in the Government Gazette.

Thailand Signboard Tax Act (“STA”)

STA provided that any signboard or signage (“Signboard”) for advertisement purpose shall be subject to tax collection. Under the STA, a Signboard

owner is obliged to pay Signboard tax unless such owner could not be identified and in this case the owner of the land or building where the Signboard is located shall be responsible for the Signboard tax. In contrast, there are certain types of Signboard that is exempted from the tax payment including the signage located on product, packaging, human or animals, Signboard displayed on a private property and not exceeding the allowed size, and Signboard belonging to governmental authorities, temples and charitable foundations. In addition, the tax rate has been specified by the Ministerial Regulation No.5 (B.E.2535).

Later in November 2020, the Thai cabinet approved an amendment to the Ministerial Regulations No. 5 (B.E. 2535) (“Amendment”) regarding the adjustment of the Signboard tax rate. The main reason for an amendment is that the Signboard tax rate specified under the Ministerial Regulations No. 5 (B.E. 2535) issued under the STA has been in enforced for a very long time in which it does not in parallel with the economy and the type of Signboard at present, thus, the Signboard tax rate shall be adjusted to figure the appropriate rate. Moreover, the Amendment also includes a tax collection scheme for mechanical sign, moving text sign and electronic sign (“Animated Signboard”) that advertise more than one image within a one-minute timeframe. The new tax rate will become effective from January 1, 2021 to December 31, 2023.

The new rates are as stipulated as follows

1. Signboard with Thai language only
 - 1.1. Animated Signboard- rate: THB 10 per 500 cm²
 - 1.2. Any other Signboards not included in 1.1 -rate THB 5 per 500 cm²
2. Signboard with a combination of Thai/foreign languages and/or pictures/markings
 - 2.1. Animated Signboard- rate: THB 52 per 500 cm²
 - 2.2. Any other Signboards not included in 2.1 -rate THB 26 per 500 cm²
3. Signboard with no Thai language or partial or whole Thai language in Signboard is located below the foreign language
 - 3.1. Animated Signboard- rate: THB 52 per 500 cm²
 - 3.2. Any other Signboards not included in 3.1 -rate THB 50 per 500 cm²

Noted: this tax rate will be only applied to Signboard from 1 January 2021

Ministerial Regulations re; determination of the appraisal price of Lands and Buildings, the accounting for appraisal price of Land and Buildings, and the map to be supplement with the appraisal Land B.E. 2563 (A.D.2020) (“Notification”)

The Notification was published in the Government Gazette on 9 December 2020.

The main context of the Notification is that the provincial committee (“Committee”) has the power to determine both appraisal price of Land and Buildings.

The appraisal price of Land shall be compared with the market price but if there is no such market price, the appraisal shall apply income approach. In case where there is the building located on the land, the appraisal price of the land will exclude the value of such building. After consideration and approval, the accounting for appraisal price and the map shall be prepared accordingly. In addition, if there is any land of which the average price to be used as of the land purchase price is different from the appraisal price for more than 15%, the Committee has to set the new appraisal price and revise the previous appraisal price.

The appraisal price of the Buildings shall be analyzed and calculated from the quantity of the construction work and construction operating expenses. In addition, the Committee needs to figure out the market price of the construction material and wages in order to determine the appraisal price. On the other hands, in event of the Buildings with the special characteristic, the income approach shall be applied and if there is absence of the information of the income approach, the cost approach shall be applied instead.

Tax e-filing for the foreign taxpayers

On 18 November 2020, The Revenue Department (“RD”) cooperates with the Immigration Bureau by sharing and linking tax information of the foreign taxpayers in order to facilitate in requesting for a copy of tax return via the online platform used for applying for permission to stay in Thailand.

The purpose of the cooperation is to connect the tax information of the foreigners through electronic means, to integrate the government services in a form of one stop service in order to satisfy Thailand 4.0, to reduce the burden the process of the foreigner working in Thailand and cost for both of the public sector and the private sector.

Who is eligible to use this service?

- Foreigner working and operating the business in Thailand with the need to extend the Visa.
- Business operator (natural person/juristic person).
- Being a foreign taxpayer who files tax return through the revenue department's e-filing.

Bill on repealing a certain law which is unnecessary or duplicate with other laws (No.3) B.E (.....)

This Bill is attempting to repeal some laws in order to reduce the burden and obstacles to life or occupation of people, as well as having only necessary laws for the effective enforcement and consistent with the conditions of the economy and the society at present. Currently, the Bill is on the Public Hearing process during 26 November to 20 December 2020. Laws considered to be unnecessary are set out below :

1. Training and Disciplining certain types of children Act B.E. 2479 (1936) and Training and Disciplining certain types of children Act (No.2) B.E. 2501 (1958)

(The reason for revocation is that Criminal Law and the Elementary Education Act B.E.2478 (1935) which is a condition for sending children to undergo training in accordance with this law has been revoked, and there is already another law in conducting the training children's behavior)

2. Royal Decree on Controlling and Operating the business of Gold mining, B.E. 2483 (1940)

(The reason for revocation is that Minerals Act B.E.2560 (2017) has replaced this Act and become effective and covers all the aspects of setting the criteria for operating all kinds of minerals)

3. Electricity Affairs Promotion Act, B.E. 2484 (1941)

(The reason for revocation is that it is duplicated with other laws such as Energy Industry Act B.E. 2550 (2007))

4. The Act prescribes procedures for persons who disseminate the news which destroys the relationship between Thailand and the country with a treaty of amity with Thailand in the state of war in B.E. 2488 (1945)

(The reason for revocation is that since the enactment of this Act, it has not been enforced and implemented.

5. The Act Prescribing Methods for Suspending Unreasonable Profits from Government, B.E. 2491 (1948)

(The reason for revocation is that since the enactment of this Act, it has not been enforced and implemented.

6. Optical Disc Production Act B.E. 2548 (2005)

(The reason for revocation is due to the advancement in technology and the changing in the customer behavior)

Establishment of the Central Law on transforming the government process of the law enforcement into the Digital Ecosystem ("Central Law")

Objectives

The purpose of this Central Law is to use an appropriate technology on the administration of the state affairs and provision of the public services for the benefits of the state administration and the convenience of people. On 8 December 2020, the Cabinet passed the resolution to the Council of the State in order to prepare the Central Law to transform the digital system by applying quickly the digital system to the various laws which shall be regarded as the law reform in accordance to the Constitution of Thailand. Currently, the Central Law is on the public hearing process from 16 December to 31 December 2020.

Problems

The main problem is that currently the provisions of the applicable law could not facilitate the method of electronic means to be applied in the process of permitting, registering, notifying for the business operation, as well as receiving the payment or issuing the receipts provided by the government authorities. Thus, in this case, it will generally cause the

unnecessary burdens and costs to the public , and obstacle for strengthening the competitiveness of the country. In addition, the regulations regarding an order and an act of the government sector or officials, and an acts of authorization in behalf of the government authorities , are still restrictive on the operation by electronic means.

to operate through an electronic means under the Central Law.

Essences of the Law

1. Submission of an application for permission, registration, notification according to law, payment, requesting for the information from the government authorities , reporting, and complaining, could be done through the electronic means which are considered to be legitimate.
2. Notification of consideration for permission, registration, issuance of receipts, or any other documents provided by the government sector, could be done through electronic means, or electronic mails which are considered to be legitimate.
3. An authorized person to register, and notify, has obligation to register and notify through the authorized website including information technology systems of the central agency designated by the Cabinet to allow people to have access at any time without any charge.
4. A licensee, who obtained the license according the law, could present an electronic evidence to prove to the official for the verification of the license.
5. Any alien with the permission to enter and work in Thailand could report himself/herself by electronic means which are considered to be legitimate.
6. An order, performance report and authorization of any of the government authorities , could be done through electronic means which are considered to be legitimate.
7. Prohibit government officials from requesting for copies of government documents provided by other government agencies from people for consideration, otherwise he/she shall be deem to commit a disciplinary offense
8. Establish an expedited transitional provision for government agencies to provide channels for people

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

