



New requirements for SMEs rehabilitation

The Thai cabinet approved the principle on the proposed amendment to Bankruptcy Act of Thailand (“Proposed Amendment”) regarding the rehabilitation of the debtor’s business. The main changes under the Proposed Amendment are set forth below.

1. The threshold of the SMEs debts are expected to be increased from not less than 10 million Thai Baht to not less than 50 million Thai Baht. The cap of the threshold is revised to be suitable with the current economic situation;
2. Under the new definition of SMEs under this upcoming amendment, SMEs will be no longer required to be registered with the Office of Small and Medium Enterprise Promotion to qualify for the reorganization process.
3. SMEs will be no longer required to prepare a business rehabilitation plan to eligible itself to file a petition for rehabilitation or to apply for automatic stay.
4. According to the Proposed Amendment, there are various new rules to expedite the proceedings for SMEs, for example, with the prepackaged plans approved by the creditors, SMEs will be eligible to request for an accelerated rehabilitation programme.

Thai Money Laundering Law Expanded Predicate Offences

On 4 November 2021, Thai Cabinet passed its resolutions on a draft Amendment to Anti-Money Laundering (No. ..) B.E. (“Proposed Amended Act”) as proposed by the Anti-Money Laundering Office (“AMLO”), which is an amendment to Anti-Money Laundering Act, B.E. 2542 (A.D. 1999) by improving anti-money laundering measures to be in line with international standards as recommended by the Financial Action Task Force (“FATF”) for the prevention and suppression of money laundering and anti-terrorism financing.

As a result, this would allow Thailand to be assessed for compliance with international AML/CFT standards in time for the assessment cycle which will drive Thailand

to become a member of the FATF by 2023. The significant matters of the Proposed Amended Act are as follows:

1. Amending the definition of “Predicate Offences” to cover more offenses to be appropriate for the current situation including the child pornography trade, tax evasion, document forgery, the digital asset trade, bid rigging and loan shark, and the definition of “Professionals” to be clearer and more consistent with business operators in Thailand.
2. Expanding the provisions on receiving, collecting and sending data of customs officials to the AMLO to cover cross-border negotiable instruments. (Formerly, only currency or foreign currency was specified). In addition, the new provisions will empower customs officials to confiscate currency, foreign currency, and cross-border negotiable instruments.
3. Establishing rules for the retention of data or documents related to customs investigations.
4. Defining the duties of associations, foundations and non-profit organizations to prevent any of them from being used as a source for money laundering or financial support for terrorism.
5. Adding a new provision on identity fraud in transactions. The offence shall be liable to imprisonment for not exceeding three years or a fine not exceeding 60,000 baht or both.

In addition, the cabinet instructed the Council of State to combine an offense in relation to smuggling immigrants under the law on immigration as a predicate offense to be included in the Proposed Amended Act.

The Financial Transaction Tax of 0.1 is proposed

On December 2021, the Ministry of Finance of Thailand announces that there is preparation to collect Financial Transaction Tax from investors with a trading volume of more than 1 million baht per month.

However, the Financial Transaction Tax at 0.1% would be applied to the amount exceeding the financial sale value limit only. To this extent, if the sale value exceeds the limit by 10,000 baht, only 10,000 baht is taxed and the investors shall be liable for the total tax amount of THB 10. At present, an individual investor is exempted from tax on capital gain while a juristic investor shall be liable for corporate income tax as stipulated by law. For dividend, an individual investor is liable for 10% withholding tax on any dividend income from any listed or limited company unless the dividend is received from any company promoted by the Board of Investment or the BOI. While the tax on dividends for a juristic investor is set under different conditions provided by the Revenue Code of Thailand.

A New Bill of Rail Transport Act B.E. ... is disclosed

The purpose of a Draft Bill of The Rail Transport Act, B.E. is to provide people with convenience, speed, economy and safety in traveling, to be in line with the strategy and policy of the Ministry of Transport from 2017 to 2021, to promote rail transport as the main transport system of the country, and to keep up the pace of the technology. It is expected that the number of the rail transport will increase by 30% within 3 years.

The significant matters on the Bill of Rail Transport Act B.E. ... are as follows:

1. Establishing "a rail transport policy committee", and the Prime Minister acts as the chairman which has duties and powers as follows:

1.1 approving the rail transport development plan and the project of the government agency in the rail transport business.

1.2 proposing guidelines for the development of real estate or other assets that benefit from the rail transport business, and the area around the rail station to the Cabinet.

1.3 Prescribing advanced rates of fares, transportation costs, rail utilization costs and assets necessary for the operation of rail transport businesses and other fees including specifying the type of person who is exempt from paying the fare.

2. Requiring the Department of Rail Transport to prepare a rail transport development plan.

3. For the implementation of the rail transport project, the State may allow the government agency to act on its own or may allow the operation by private investment.
4. Designating the project owner to define the rail transport system and the rail transport safety zone.
5. prohibiting anyone from operating a rail transport business unless a license is issued by the Minister.
6. Establishing a "railway accident investigation committee"
7. Providing the protection of passengers as follows:

7.1 The licensee shall collect fares, transportation costs, rail utilization costs and assets necessary for the operation of rail transport businesses. and other fees cannot exceed the rates announced by the Committee.

7.2 The licensee shall be liable to indemnify the passenger in the event that the rail transport operation is delayed or cancelled.

7.3 The licensee must provide insurance against damage incurred to the life and body of the passengers and service users.

7.4 The licensee is obliged to provide facilities for passengers and service users especially the disabled, the elderly, pregnant women and children to be suitable for using the services of the rail transport business.

The Proposed Amendment Act can be seen as an instrument to drive the Thai rail system to be internationally equivalent, boost Thai economy, and increase the country's potential and competitiveness.

The New Royal Decree supports deal of True-Dtac regarding telcom spectrum management

Currently, the hottest news in Thai telecommunication industry is the merger negotiations between True and DTAC. In a short and simple summary, the two companies have made an MOU between them on a

business merger study. A new company will be established.

This business merger is subject to exemption under Article 4, Clause 4 of the Trade Competition Act B.E. 2560 (A.D. 2017) because it is a business that has a specific law governing on trade competition. The Notification of the Broadcasting Committee Television Business and the National Telecommunications Commission (NBTC) on measures to regulate business merger in the Telecommunications Business under Section 27 (11) of the Act on Organization for Spectrum Allocation and Regulation of Broadcasting Businesses television and Telecommunications B.E. 2553 and its amendments together with Sections 21 and 22 (3) (4) of the Telecommunications Business Act B.E. 2544 empower the NBTC as the regulator to consider this business merger.

Before it became clear on the merger of True and DTAC, the amendment to Section 30, paragraph 1 of the Act on Organization for Assigning Frequency Waves and Regulating the Radio Broadcasting Business Television and Telecommunications (No. 3) B.E. 2562 was announced on 7 November 2021 (“Royal Decree”).

The significant issues of the Royal Decree which might be seen as supporting the spectrum management by the telecom operators are as follows:

1. Providing more flexible criteria for the operators to apply additional business licences, transfer spectrum licences and obtain spectrum licences via other methods apart from auctions.
2. Allowing the spectrum holders to trade off their spectrum ranges making it easier to come up with the partnership deal for spectrum usage.

However, The Office of the NBTC has also drafted four new regulations to support the Royal decree which covers the amendments to the spectrum management, criteria for applying for a business license, criteria for Spectrum License Transfer as well as the rules for allocation of spectrum range apart from auction.

When such regulations come into force, they will become clearer on whether this Royal Decree aims to aid True-Dtac deal or not.

The Amendment to Copyright Act.

The proposed amendment of Thailand’s Copyright Act (“Proposed Amendment”) is currently under the legislative process with the noteworthy changes. The Proposed Amendment is prepared for Thailand to be ready for the WIPO Copyright Treaty and to bring Thai copyright laws in line with the requirements of the Treaty.

The major proposed amendments are summarized as follows:

- Whereas the current law provides copyright owners of photographic work with protection for 50 years from first creation or publication of the copyright, the Proposed Amendment provides protection for the authors lifetime, plus 50 years.

- Injunctive relief against copyright infringement and protection from infringement liability for internet service providers (ISPs) contained in the existing legislation has proved singularly ineffectual.

- Using the notice-and-take-down system, the Proposed Amendment will bolster safe harbor provisions which exempt ISPs from liability for copyright infringement commitment by their service users, similar to the provisions contained within the Digital Millennium Copyright Act in the USA.

- The emphasis allows copyright owners to notify ISPs of an alleged infringement. The ISPs will immediately, as a precaution, take down the data in question. They will simultaneously notify the user who posted the material, thus allowing them the opportunity to oppose the removal. Should the user bring a counter-notice, the ISP will notify the copyright owner to confirm whether to reinstate the data or maintain the ‘take-down’.

- Technical Protection Measures (TPMs) will also be strengthened in the Proposed Amendment Act . The TPM violations included prohibiting providing services from shirking their TPM responsibilities and outlines clearer definitions of liability relating to manufacturers, sellers, distributors of products, equipment or providers of services intended to evade TPMs.