



## FINANCIAL

### **The Securities and Exchange Commission of Thailand revises regulations for the offering of securities via Crowdfunding Portals**

After gaining approval from both the Securities and Exchange Commission of Thailand (the “SEC”) and the Capital Market Supervisory Board of Thailand, a significant step has been taken to amend the rules governing securities offerings through crowdfunding portals. The primary objective is to streamline and harmonize regulations, focusing on promoting funding for SMEs and startups while ensuring effective supervision of crowdfunding platforms.

The SEC and the Capital Market Supervisory Board of Thailand have issued several Notifications in connection with the offerings of securities via crowdfunding portals. These include Notification of the Securities and Exchange Commission GorJor. 7/2566 Re: The Exemption from Filing the Registration Statement to Offer for Sale of Securities via Crowdfunding Service Providers (No. 2), Notification of the Capital Market Supervisory Board TorJor. 8/2566 Re: Specifications regarding the Offering of Securities for Sale through Crowdfunding Portals (No. 3), Notification of the Capital Market Supervisory Board TorThor. 11/2566 Re: Guidelines, Conditions and Methods for Requesting Approval or Notification by Electronic Means (No. 2) and Notification of the Capital Market Supervisory Board TorJor. 9/2566 Re: Guidelines, Conditions and Methods for the Offering of Shares of Limited Company by Shareholders (No. 5). In this relation, all aforementioned Notifications have been officially published in the Royal Gazette and came into force on 16 July 2023.

As a result, the SEC has issued a notification containing the prescribed rules for securities offerings via crowdfunding portals which highlights the following key points:

1. **Enhanced Crowdfunding Opportunities:** The SEC increases the maximum security-based crowdfunding offering to retail investors from 40 million baht per investor to 50 million baht (including all securities issued by the company). In addition, there will be no limit for Institutional Investors, Ultra High Net Worth Investors and High Net Worth investors.
2. **Exception for Ultra High Net Worth Investors and High Net Worth investors:** Ultra High Net Worth Investors and High Net Worth investors are not required to take a knowledge test before subscription for security-based crowdfunding.
3. **Enhanced Definitions and Clarified Wording:** The SEC enhances the definition of the term “Institutional Investors” in notifications pertaining to security-based crowdfunding offering and offering of shares of a limited company by shareholders, definition of “Institutional Investors” shall include Private Equities (PE), Venture Capitals (VC) or Angel Investors and investors with expertise in alternative investments.
4. **Renewal Approval for Funding portal:** The Funding Portal users who wish to renew their approval can submit an application for renewal at least 60 days in advance before the current approval period expires. Upon receiving all complete and accurate documents and evidence, as outlined in the public handbook, the SEC will provide notification of the approval application results within 60 days from the date of such submission.

5. Enhancing Funding Portal Oversight: After obtaining approval, the Funding Portal will be mandatorily required to timely report to the SEC in the event of any change in any qualification or performance of duties within a specified timeframe. For instance, if the Funding Portal intends to suspend its duties or encounters challenges in maintaining qualifications as stipulated by the rules or if there are modifications in personnel holding positions such as directors, managers, division directors, or their equivalents.

carry out their obligations in accordance with the Emergency Decree on the Exchange of Information to comply with International Agreements on Taxation B.E. 2566 (A.D. 2023), which are divided into 6 matters as follows:

- 1) Responsible person for reporting;
- 2) General auditing;
- 3) Auditing an individual's account;
- 4) Auditing a juristic person's account;
- 5) Special criteria for customer data verification; and
- 6) Miscellaneous

### New Regulations regarding Exchange of Information

On 5 July 2023, the Thai Cabinet passed its resolution on the following matters:

1. Approve in principle a draft Ministerial Regulation issued under the Emergency Decree on the Exchange of Information to comply with International Agreements on Taxation B.E. 2566 (A.D. 2023) (“**Draft Ministerial Regulation**”) as proposed by the Ministry of Finance;
2. Instruct the Ministry of Finance to notify the Organization for Economic Cooperation and Development (“**OECD**”) for implementation of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (“**MCAA CRS**”) to be bound when the Draft Ministerial Regulation and other subordinate laws of the Draft Emergency Decree on the Exchange of Information to Comply with International Agreements on Taxation B.E. 2566 (A.D. 2023) have come into force.

Significant matters of the Draft Ministerial Regulation are to set out the rules and procedures relating to duties of responsible persons for reporting financial account information who are financial institutions in Thailand, which must

### BOT aims to finalize virtual banking license rules

The Bank of Thailand (“BOT”) has made a decision to grant virtual banking licenses to three operators, a strategic move aimed at enhancing the stability of the fiscal market while providing added protection to depositors in light of potential unforeseen risks associated with this innovative business model.

Currently, the licensing regulations are still undergoing the finalization stage, reflecting the BOT's meticulous approach to ensure a robust and well-structured framework for virtual banking operations. The BOT is actively working to complete this process. However, before they can accept licensing applications in 2024, a few additional steps need to be taken to ensure a comprehensive and secure virtual banking ecosystem. In addition, the BOT plans to announce the names of the successful applicants in 2024 to commence their virtual banking operations in 2025. Once approved, these applicants are required to commence their business within one year after receiving approval of a virtual banking license from the Minister of Finance.

This move towards virtual banking licenses is expected to offer a full range of financial services tailored to different customer groups, thereby providing a better banking services experience and

stimulating competition among financial institutions. However, in addition to the aforementioned goals, the BOT expects that virtual banking will not pose engaging risks to financial stability. Based on the study conducted by the BOT, there are many virtual banking businesses abroad that were unable to survive, which has affected depositors. Therefore, the BOT aims to set up criteria for applicants to have at least registered capital of 5 billion baht to ensure that a bank or a company is strong enough and well-structured to apply and operate a virtual banking .

**Securities and Exchange Commission of Thailand implements rules for risk disclosures of cryptocurrency trading and prohibition of digital asset business operators from offering returns to deposit taking & lending services**

The Office of Securities and Exchange Commission of Thailand (the “SEC”) has taken significant steps to enhance the disclosure of risk warnings in cryptocurrency trading for investors. The new guidelines aim to provide investors with comprehensive information about the potential risks associated with cryptocurrencies. Additionally, the SEC has introduced strict regulations prohibiting digital asset business operators from providing or supporting custody of depositors’ digital assets that promise returns to depositors, as well as engaging in lending (deposit taking & lending). These measures have been put in place to bolster investor protection and safeguard them from the potential risks associated with such services.

The SEC has taken significant steps to address both issues by officially publishing the Notification of the Securities and Exchange Commission GorThor. 6/2566 Re: Guidelines, Conditions and Methods regarding the Operating of Digital Asset Business (No. 20) in the Royal Gazette on 8 June 2023. The key points of these regulations are as follows:

1. Disclosure of risk warnings in cryptocurrency trading: (Effective from 31 July 2023) Cryptocurrency exchanges, cryptocurrency brokers and cryptocurrency dealers are required to disclose risk warnings for cryptocurrency trading. The warning message must read: "Cryptocurrencies are high-risk. Please thoroughly study and understand the risks associated with cryptocurrencies, as you may lose your entire investment." The warning message must be prominently displayed along with the result notifications of the investment suitability test and the basic asset allocation before customers can utilize such services. Additionally, the digital asset business operators must ensure that users provide their consent and acknowledge the risks before utilizing such services.
2. Prohibition of digital asset business operators from providing or supporting deposit taking & lending services: (Effective from 30 August 2023). The key points of this prohibition can be summarized as follows:
  - 2.1. The digital asset business operators are not permitted to accept deposits of digital assets to utilize the deposited digital assets for borrowing or investment purposes with returns paid to depositors.
  - 2.2. The digital asset business operators are not permitted to accept deposits of digital assets in the event where the digital asset business operators offered or proposed to give returns from depositing digital assets or other returns to depositors (such as return from the company's marketing budget), except in cases of sales promotions as prescribed by the SEC notification.
  - 2.3. Advertising, persuading the general public or engaging in any activities that support the deposit taking & lending services as stipulated under (2.1) and (2.2) by the

digital asset business operators or other individuals is strictly prohibited.

**The Non-criminal Fine (The Phinai Fine): to replace the criminal penalties for less-serious offenses**

Thailand is facing the crisis of overcriminalization, in order to reduce such a problem, the Act on Phinai Fine B.E. 2565 (A.D. 2022) (“Act”) was published in the Government Gazette on October 25, 2022 and it shall be effective from June 22, 2023 onwards. The Act is to replace certain types of criminal offenses which are solely penalized in a form of a fine of either a criminal fine or an administrative fine as specified in the lists of laws attached in the Act which consist of 204 types of law in three separate lists. The examples of laws as specified in the lists;

**List 1:** the Alcoholic Beverage Control Act B.E.2551 (A.D. 2008), Tobacco Product Control Act B.E. 2560 (A.D. 2017), Labor Protection Act B.E.2541 (A.D. 1998) Land and Building Tax Act B.E. 2562 (A.D. 2019) and Consumer Protection Act B.E. 2522 (A.D. 1979);

**List 2:** Foreigners Working Management Emergency Decree B.E. 2560 (A.D. 2017), Emergency Decree on Digital Asset Businesses B.E. 2561(A.D. 2018), Immigration Act B.E. 2522 (A.D. 1979), Factory Act B.E. 2535 (A.D. 1993) and Narcotics Code;

**List 3:** Community Forrest B.E. 2562 (A.D. 2019), Thai Vessels Act B.E. 2481 (A.D. 1938) and Social Enterprise Promotion Act B.E. 2562 (A.D. 2019)

The Act reclassifies the violations as prescribed in the List 1 to List 3 as the Phinai fine offenses instead of criminal offenses, then such offenses are no longer considered as the criminal offenses. Therefore, the offenders who are subjected to one of these Phinai fines will not have a criminal record.

**Asia Wealth Securities has its license revoked.**

The Securities and Exchange Commission (“SEC”) has ordered the revocation of Asia Wealth Securities (“AWS”)’ derivative business license, which took effect on 24 July 2023.

In general, the derivative business license will be issued to businesses that provide advisory services and performed as derivative fund managers. In order to maintain this license, these business operators must always be qualified and ready to support business operations, as well as protecting the interests of the investors.

However, in case of failure to meet these required qualifications under the related SEC regulations, it will result in severe penalties from the SEC in order to safeguard the integrity of the financial markets and ensure investor confidence.

The case of AWS is a great example which serves as a crucial lesson for all financial entities to uphold their responsibilities with utmost diligence, ensuring transparency and prioritizing the welfare of their investors to promote a healthy and resilient financial ecosystem. By doing so, businesses can maintain their licenses, contribute to market stability, and inspire trust among investors.

In conclusion, the revocation of AWS's derivative business license by the SEC serves as a significant reminder of the regulatory standards and responsibilities imposed on businesses operating in the financial markets. It underscores the necessity for continuous compliance with the prescribed guidelines and laws, as well as the paramount importance of safeguarding the interests of investors. Financial entities must remain vigilant and dedicated to their roles as custodians of investor assets, which will ultimately contribute to a well-functioning and trustworthy financial landscape.

## DIGITAL

### A New Law on Movies and Video Games

A draft Movies and Games Act. B.E.... (the "Bill ") has been announced via the website of the Department of Cultural Promotion under the Ministry of Culture of Thailand for public hearing from 20 April 2023 to 24 May 2023 which mainly focuses on the sale of movies and games since the Bill requires game developers or media producers in Thailand to apply for a content rating and to pay government fees regardless of whether the content is distributed in Thailand or foreign countries. Failure to comply may result in a fine ranging from 10,000 to 500,000 Thai Baht.

Significant matters of the Bill are summarized as set forth below.

1. Given the definition of "Games" which refer to continuously moving images, whether with or without sound, which are presented to a person to participate in playing via technology which is used to analyze and process information. As a result, the given definition of games under the Bill will be broaden than the current act, the Film and Video Act B.E. 2551 (A.D. 2008).
2. Appointment of National Committee for the Promotion of the Movie and Game Industries, and Rating Committee
3. Implementation of game "rating system"
4. Implementation of a "private evaluator" system
5. Permission to sell games outside of Thailand

Following its publication for public hearing, the Bill has received comments from representatives of the gaming and film sectors. Many of the comments are skeptical of the obligation to acquire authorization to export or sell, as well as the criteria

for inspecting game content and the given definition of movie whether it covers content producers on online platforms such as Facebook, YouTube, Tiktok. Given this criticism, it is reasonable to predict that the Bill will require more revisions to represent the industry's viewpoint.

### Commission to set guidelines for digital platforms, prices

In the modern society, the realm of sales and purchases has predominantly shifted to online platforms. However, a growing noise of consumers has raised concerns about perceived exploitative practices employed by both vendors and platforms. These concerns can be summarized as follows:

**Restricted Delivery Options:** In the past, consumers enjoyed the freedom to select a delivery service that aligned with their preferences—delivery fees, delivery period, and quality. Regrettably, this autonomy has been supplanted by a standardized delivery service dictated by the platform, erasing the diversity of choices once available.

**Vendor Recommendations:** Consumers anticipate a random array of vendor suggestions when searching for products. Contrary to this ideal, the reality often reveals that the recommended vendors are those who have either paid for such positioning or hold special agreement with the platform. This not only creates an uneven playing field but also erects trade barriers for vendors who are averse to shouldering additional burdens .

**Unjust Pricing Practices and Profiteering:** While vendors traditionally had the prerogative to set their sale prices, a disturbing trend has emerged where consumers are coerced into adhering to fixed sale prices, sometimes coupled with punitive conditions for non-compliance. This situation not only curtails consumer agency but can also lead to adverse outcomes.

The cumulative impact of these issues points towards an atmosphere of unfair competition. In



response, the Trade Competition Commission is diligently formulating comprehensive guidelines for digital platform businesses and proposing standardized pricing frameworks. These endeavors are currently in the crucial phase of soliciting input and feedback from pertinent stakeholders.

## **TAXATION**

### **What carbon tariffs mean for Thailand**

Global warming is becoming an increasingly critical issue for our world, prompting various sectors worldwide to take measures to minimize its impact. One of the most significant concerns is the reduction of greenhouse gas emissions, particularly carbon dioxide.

To address this problem, the European Union (“EU”) has implemented the Carbon Border Adjustment Mechanism (“CBAM”) to impose tariffs on products with high carbon dioxide emissions during their manufacturing process. This measure will take effect on 1<sup>st</sup> October 2023, requiring manufacturers to report their greenhouse gas emissions. Subsequently, from 1<sup>st</sup> January 2026, they will be required to pay a levy for the CBAM certificate.

Similarly, the United States of America (“USA”) has introduced the Clean Competition Act, which operates similarly to the EU's CBAM but covers a broader range of industries, including petroleum production, fertilizer, glass, pulp, and paper etc. This act will affect producers from 2023 and importers from 2026.

Thailand's manufacturers, particularly those in the iron, steel, aluminum, and cement sectors, will face trade barriers from both the EU and USA, placing additional burdens on their businesses. However, some experts view this as an opportunity for Thailand to focus on promoting renewable energy development and Bioeconomy, Circular Economy, and Green Economy (“BCG”), which offer a

plethora of interesting projects, including technology-based businesses. Additionally, businesses have the potential to generate revenue from carbon credit trading, where they can offset their carbon dioxide emissions by trading credits with other businesses.

In summary, global warming necessitates urgent action, and the EU's CBAM and the USA's Clean Competition Act are examples of measures taken by various countries to address carbon emissions. While Thai manufacturers may face challenges due to trade barriers, they also have the opportunity to explore sustainable and innovative alternatives, such as renewable energy and carbon credit trading, to mitigate the impact on their businesses and the environment.

### **Legal Tactics Used to Minimized Tax**

A prominent critic made allegations against a former CEO of a real estate developer that the former CEO was aware that landlords are implementing legal tactics to evade making tax payments on land transactions. In addition, the managing director of a property consultant stated that landowners usually look for methods to reduce tax payments when selling their property. The general rule is that the Department of Land considers two or more persons who collectively own land will be considered as a group of persons. In other words, they must pay a progressive tax rate. In general, a group of landowners or one owner is required to pay , transfer fee, withholding tax and special business tax at the time of transferring land or selling land. Consequently, ownership of land is transferred by a group person as a single person at a time to avoid tax payments from landowners. Moreover, another tactic that is implemented is using family members to buy a piece of land at a certain price and resell it later for profit.

### **Department plans to study sodium tax**

Building on the triumph of the "sweet tax," which has demonstrated its efficacy in bolstering revenue and fostering consumer health, the Excise Department is contemplating a strategic restructure in the form of a "sodium tax." This proposed levy is designed to mirror the successful approach of the sweet tax and add considerations of Environmental, Social, and Corporate Governance (ESG) principles. The initial focus of the sodium tax initiative will encompass processed food items, including but not limited to instant noodles, frozen foods, and snacks.

The driving force behind the introduction of the sodium tax is the imperative to counter the adverse health effects stemming from excessive sodium consumption. High sodium intake has been associated with a range of health concerns, such as hypertension, kidney ailments, heart disease, and strokes. Notably, the World Health Organization (WHO) recommends a daily sodium intake of no more than 2,000 mg, yet the average sodium consumption among the Thais currently hovers around 3,600 mg.

Apart from the tax strategy, the government has pursued alternative measures aimed at convincing consumers to reduce their sodium intake. These initiatives include informative campaigns that highlight the sodium content on nutritional labels of products.

While the sodium tax concept undergoes meticulous scrutiny through feasibility studies and a balanced examination of its merits and drawbacks, its potential impact is underscored by the tangible outcomes of the sweet tax. The remarkable reduction in the consumption of sugar-sweetened beverages, characterized by 10 to 14 grams of sugar per 100 ml, stands as a testament to the efficacy of the sweet tax. Research conducted by the Institute for Population and Social Research at Mahidol University substantiates this decline, reflecting a significant drop from an annual

consumption of nearly 3 billion liters to fewer than 800 million liters over the past five years.

In essence, the prospect of a sodium tax poised for introduction stems from the success of the sweet tax and its reverberating influence on healthier consumer choices. The ongoing study of the sodium tax's viability is undoubtedly informed by the lessons gleaned from its sweet tax predecessor, presenting a compelling narrative of the potential for reduced sodium consumption and improved public health outcomes.

### **The excise tax on liquor and beer is expected to be restructured**

On 14 August 2023, Mr. Ekniti Nitithanprapas, the Director-General of the Excise Department of Thailand, announced that the Excise Department is currently in the process of holding discussions and hearing proposals from both public and private sectors, to amend the liquor and beer excise tax structure to be in line with the current situation and to be consistent with the development of alcoholic beverages.

Despite the fact that the Excise Department recently reformed the excise tax by substituting factory-based prices with retail-based prices for tax computations, new beverage products, such as zero-alcohol beer, fall under tax loopholes which are subject to non-alcoholic beverage taxes.

Thus, this study of the liquor and beer excise tax restructure does not intend to increase the tax rates but clearly categorizes the product types and the excise taxes are currently paid incorrect on types of products.

In case of soju (excluding rice whisky), it is subject to the excise tax at 10% as categorized under fermented spirits. However, by determining soju production methods and ingredients, it is a mixture of distilled and fermented liquor. As a result, the current excise tax rate on soju is lower than the

distilled spirit products which is subject to the excise tax at 20%.

Therefore, it requires more study to classify the type of aforementioned products, in terms of the appropriateness of tax collection, since the existing overlapping beverage tax system may be exploited for tax avoidance .

remarkable 17.9% upswing from the preceding year. This robust growth underscores the latent potential intrinsic to the mini-FTA with Yunnan. Consequently, this agreement is poised to offer Thailand an exceptional avenue to not only invigorate but also diversify its economic horizons.

## **TRADE**

### **Thailand signs trade pact with Yunnan**

On 17 August 2023, a significant development unfolded as the International Trade Promotion Department of Thailand and Yunnan Province of China formally inked the eighth mini-free trade agreement (“mini-FTA”). This strategic accord aims to fortify collaboration in logistics and cross-border e-commerce, aiming to rejuvenate the export sector's momentum, which has experienced a recent deceleration.

The newly established mini-FTA holds a multitude of advantages, particularly favoring China with enhanced cooperation prospects across several key industries. These encompass the agricultural and food sector, electric vehicle industry, Artificial Intelligence (“AI”) domain, green industry, as well as the medical and health field. On the other hand, Thailand stands to gain substantially from this agreement through amplified agricultural and food product exports, with a pronounced emphasis on premium fruits.

Yunnan Province, geographically proximate to Thailand's border, assumes the important role of being the gateway that bridges the western regions of China to the vibrant landscapes of Southeast Asia and South Asia. A noteworthy statistic underscores the promise of this agreement: trade between Thailand and Yunnan surged to a noteworthy \$2.34 billion in 2022, denoting a

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