



## AGRICULTURE

### **Amendment to the Fisheries Act**

A Bill of the amendment to the Fisheries Act has been approved by the Cabinet with the purposes to mitigate difficulties in the fishery sector and promote the efficient fishery practices.

In accordance with this proposed amendment, the major changes are underlying in an issue of the impact to more than 600,000 coastal small-scale fishing households in 20 provinces and promoting the sustainable practices. However, this issue had been previously introduced in 2017, regarding the illegal, unreported, and unregulated (“IUU”) fishing practices. Also, this new change will only be imposed on Thai nationals only, including local fisheries registration. Punishments will be imposed on the persons and the licenses will be revoked. It also allows small fisheries to transfer the license for vessels of under 10 tons to their descendants, which was previously prohibited in the current regulation. The proposed amendment to the Fisheries Act is still under the reviewing stage to ensure that it complies with the international regulations.

### **ACFTA**

#### **Thailand's sugar exports to China surge due to ACFTA**

The ASEAN-China Free Trade Agreement (ACFTA) has substantially boosted Thai exports to China, particularly in processed sugar products such as syrup, artificial honey, and different sweeteners. Thailand has become the primary supplier in China's import market, securing the top position with a total value of \$854 million (29.8 billion baht), constituting 86.9% of China's imports. Imports from Thailand to China

experienced a remarkable 103% year-on-year growth in volume. This surge in trade reflects high demand in the Chinese market of Thailand's processed sugar products.

A key factor contributing to Thailand's export dominance in the category is utilization of trade benefits under ACFTA. ACFTA bestows preferential treatment upon Thailand with the exemption from import taxes for processed sugar upon presentation of a certificate of origin (Form E) issued by the Foreign Trade Department. In absence of the benefits provided by the ACFTA, Thailand would be subject to the standard import customs duty at the rate of 30%.

## CANNABIS

### **Challenges and Controversies Surrounding Cannabis Regulation in Thailand**

The Justice Ministry called on the Public Health Ministry to categorize cannabis flower buds and extracts as narcotics until comprehensive legislation regulating cannabis use is enacted. Justice Minister Pol Col Tawee Sodsong expressed concerns regarding the absence of regulations leading to recreational cannabis use, particularly among those under 18 years of age. A public forum highlighted discrepancies in legal amendments meant to support medical use and research. Due to the lack of a comprehensive law, cannabis is easily accessible online, contributing to increased usage among individuals aged 18-19. The Justice Ministry's proposal aims to protect public health and prevent abuse, supported by a Centre for Addiction Studies (“CADS”) study indicating a rise in cannabis usage. However, Public Health Minister Cholnan Srikaew insists that classification as a narcotic requires approval from the Office of Narcotics Control Board (“ONCB”). The upcoming Cannabis and Hemp Control Bill does not seek to

re-categorize cannabis parts as narcotics but aims to regulate usage based on THC content. The Cannabis Future Network opposes any attempts to label parts of the plant as narcotics and advocates for a comparative assessment of cannabis against alcohol, tobacco, and methamphetamine for public determination.

## FRANCHISE

### **Franchise Business Regulation in Thailand: Ensuring Fair Competition**

In Thailand, franchise business activities are regulated by the Trade Competition Commission, falling under the purview of the Trade Competition Act A.D. 2017 (B.E. 2560) (“Trade Competition Act”). This legislation aims to prevent monopolistic practices and ensure fair competition in the market. Specifically, Section 57 of the Trade Competition Act outlines provisions to prevent business operators from engaging in practices that may harm other businesses.

According to the Trade Competition Commission Notification Re Guideline for the Consideration of Unfair Trade Practices of Franchise Business (“Notification”), a franchise is defined as a business relationship between a franchisor and a franchisee. It involves a written contract where the franchisee operates a business using the format, system, procedures, and intellectual property rights of the franchisor for a specified period or area, in exchange for remuneration.

The Notification also stipulates that a franchisor must disclose various details of a franchise contract to franchisee, including information on remuneration, business expenses, franchise business plan, and intellectual property rights. Additionally, the franchisor must adhere to guidelines when expanding its franchise operations, ensuring fairness and preventing harm to the franchisee in nearby areas.

One key aspect of the regulation is the requirement for the franchisor to offer the right

to open a new branch to existing franchisees in the closest area first, before considering other options. This is the case unless the original franchisee fails to meet specified criteria, in which case the franchisor must provide a clear explanation and issue a minimum 30-day notice period to the franchisee to rectify failure.

The Notification also sets out guidelines for franchisors to avoid practices that may harm franchisees, such as imposing unjustified conditions, restricting the purchase of goods or services from other vendors, or setting unfair conditions for specific franchisees.

To determine what constitutes "appropriate justification" for certain actions, the Notification provides criteria, including a requirement that an action must be acceptable for legitimate reasons related to economic, business, or marketing activities, and must not have been done before or be considered normal business practice. Additionally, any conditions not specified in writing and not notified to a contractual partner within a reasonable time are deemed unacceptable.

In conclusion, the regulation of franchise businesses in Thailand aims to promote fair competition and protect franchisees from unfair practices. Franchisors are advised to adhere to the guidelines and clearly specify the justification for their actions in franchise agreements to avoid breaching the Trade Competition Act.

## INVESTMENT PROMOTION

### **The Eastern Economic Corridor (“EEC”) has approved a 10-year visa, work permit, and a flat 17% tax rate for foreigners**

Under Thailand 4.0, the Thai government has enacted numerous investment programs in order to attract foreign ventures. These include the Eastern Economic Corridor (“EEC”) which provides investors who have invested within the specific industrial areas and economic zones with added-on benefits. The EEC has designated 3

geographical areas covering the Eastern Seaboard of Chacheongsao, Chonburi, and Rayong provinces.

The EEC aims to improve the quality of living of people with advanced industries and high-skilled labor through 12 targeted industries (5 First S-Curve and 7 New S-Curve), which include: next-generation automotive; smart electronics; medical services; wellness tourism; agriculture and biotechnology; food for the future; automation and robotics; innovative technology; biochemical and biofuel; aviation and logistics; digital; and education and human resource development. The EEC has classified 26 Promoted Zones for Targeted Industries as the location of these qualified activities, in which eligible investors will receive both tax and non-tax benefits.

The Board of Investment approved several measures, including a filing extension of the investment package and additional benefits for companies in the Promoted Zones for Targeted Industries and Promoted Zones for Specific Industries, aiming to encourage prospective investors around the world. The Thai cabinet approved the establishment of seven Promoted Zones for Specific Industries, namely:

- EECa, Eastern Airport City
- EECi, Innovation Platform
- EECd, Digital Park
- EECmd, Medical Hub
- EECg, Genomics Thailand
- EECh, High-Speed Rail Ribbon Sprawl
- EECtp, Tech Park Ban Chang

On 24 November 2023, the EEC approved a package of incentives to attract foreign investments, marking the first time such privileges have been offered under the EEC's legislative framework. The incentives include a 10-year visa, simplified work permit procedures, and a flat 17% tax rate for foreigners involved in

strategic economic activities in the EEC. The EEC Visa is categorized into four types:

- Specialists: EEC Visa "S"
- Executives: EEC Visa "E"
- Professionals: EEC Visa "P"
- Spouses and dependents: EEC Visa "O"

These visas offer benefits such as automatic work permits, a 17% flat income tax rate, a maximum visa duration of 10 years tied to the employment contract, and a dedicated fast-track channel at international airports in Thailand starting from 1 January 2024.

The initiative aims to stimulate foreign investment, especially from environmentally friendly modern industrial business operators. The EEC emphasizes equitable and transparent guidelines for granting incentives within the special economic promotion zone, focusing on principles like innovation, consideration of benefits, inter-agency collaboration, and rigorous monitoring. The committee will assess factors such as industrial sector, investment plan, commencement date, supply chain importance, investment value, technology, knowledge transfer, and community outreach.

## **LABOUR**

### **The draft Independent Workers Promotion and Protection Bill aims to transform freelance work in Thailand**

In response to the evolving digital landscape and the increasing reliance on electronic platforms for work, the Ministry of Labor has introduced the draft Independent Workers Promotion and Protection Bill. This Bill aims to address the challenges faced by independent workers, or semi-independent workers, who provide services through platforms like Grab, Bolt, and Robinhood.

The digital age has revolutionized the way people work and conduct transactions, with traditional cash transactions in Bangkok being replaced by

digital payments such as credit cards, debit cards, and QR codes. This shift has led to the emergence of a new paradigm of work, where independent contractors play a crucial role in providing services ranging from food delivery to transportation.

Despite their essential contributions to the economy, semi-independent workers often find themselves in precarious situations due to the lack of protections provided by traditional employment laws. The Independent Workers Promotion and Protection Bill seeks to establish a distinct category for these contractors, recognizing them as semi-independent professionals.

Key provisions of the draft bill include:

**Safeguarding Semi-Independent Workers:** The bill aims to protect semi-independent workers by prohibiting business operators from arbitrarily terminating their services during the resolution of complaints or serious allegations.

**Regulating Agreements for Transparency and Fairness:** Recognizing the importance of transparency and fairness, the bill seeks to regulate agreements between business operators and semi-independent workers to create a working relationship that respects the rights of both parties.

**Strengthening Collective Bargaining Power:** The bill promotes formation of worker's unions among independent workers and semi-independent workers, empowering them to engage in collective bargaining for a more equitable working environment.

**Establishing a Dedicated Committee:** the Independent Workers Promotion and Protection Committee will be established to safeguard the rights and promote the well-being of independent workers, addressing emerging issues and ensuring effective implementation of the Bill.

**Enhancing Well-Being:** The bill proposes the establishment of a fund where members can contribute, benefits such as access to credit

unions, insurance coverage, and other rights to enhance the well-being of semi-independent workers are provided.

**Arbitration Mechanisms for Dispute Resolution:** Semi-independent workers will have the right to arbitrate labor disputes through tribunal, arbitrators, or the labor court, ensuring a fair and impartial resolution mechanism tailored to the specific nature of freelance work.

## **PDPA**

### **The Personal Data Protection Committee (the “PDPC”) finally announced subordinate legislation on rules for protection of personal data transferred to other countries pursuant to sections 28 and 29 of the Personal Data Protection Act B.E. 2562 (the “PDPA”)**

After the PDPA became effective on 1 June 2022, the PDPC has proactively issued a series of subordinate laws and regulations to further clarify unclear and debatable legal interpretation raised from the public to enhance the robust personal data protection practice. As the latest, the PDPC finally issued the Notification regarding the rules for protection of personal data transferred to other countries pursuant to section 28 of the PDPA B.E. 2566 (the “Rules under section 28”) and the PDPC Notification regarding the rules for protection of personal data transferred to other countries pursuant to section 29 of the PDPA B.E. 2566 (the “Rules under section 29”), which will come into force on 24 March 2024.

Generally speaking, the Rules under section 28 is a general provision ensuring adequate protection for personal data transferred internationally; while the Rules under section 29 regulates protection for personal data processed and transferred within corporate group entities under a binding corporate rule.

Pursuant to the Rules under section 28 and the Rules under section 29, the ‘Cloud computing service provider’ means a service provider who maintains or stores data for other persons and has

a data management system on the internet for providing services. This, interpretably, includes Infrastructure as a Service (IaaS), Platform as a Service (PaaS), Software as a Service (SaaS), Data Storage as a Service (DSaaS), Serverless Computing, or Function as a Service (FaaS). Whereas, the term of ‘Send or transfer personal data’ simply refers to sending or transferring personal data by the sender or transferer to a receiver but excluding sending and receiving of personal data as intermediary for data transit between computer system, network system, or data storage, temporarily or permanently, where nobody has access to it other than a data controller or data processor sending such personal data, or their personnel, employees, workers.

As stated in section 28 of the PDPA, a data controller can only send or transfer personal data to a destination country or an international organization that receives such personal data, has adequate personal data protection standards, and satisfies at least one lawful basis set forth therein. The Rules under section 28 further provides that an adequate personal data protection standard is based on two determining criteria: (i) the legal measures and (ii) existence of regulatory bodies, in the destination country or international organization.

Notwithstanding, for any cross-border transfer of personal data among the same affiliated business or same group of undertakings, such transfer can be done under the Binding Corporate Rules (BCRs), approved by the PDPC. Simply speaking, the ‘Binding Corporate Rules’ is a policy or agreement regarding personal data protection to which the sender and the recipient of personal data transferred, jointly agree to be bound by it, in order to determine appropriate safeguard for personal data protection within the same affiliated business or in the same group of undertakings.

However, in all cases, in the absence of (i) unavailable decisions regarding adequate personal data protection standards of the

destination country or the international organizations, issued by the PDPC under section 28 of the PDPA; or (ii) not having the approved BRCs, clause 8 of the Rules under section 29 still leaves a room for a data controller or a data processor to send or transfer of personal data to a foreign county under the condition that the foreign country has appropriate safeguards, under which the rights of data subject must be enforceable and have efficient legal remedies. In this regard, the appropriate safeguard can be in a form of contractual clauses, certification, or security measures terms in an instrument or an agreement.

## **SECURITY**

### **Office of Securities and Exchange Commission (the “SEC Office”) has public hearing on a draft of notification to prevent Thai investors from abusing Non-Voting Depositary Receipt (the “NVDR”)**

The SEC Office has opened the public hearing on the Draft of SEC Office’s Notification Regarding Standards of Business Operation, Operating Structure, Working System and Service of the Securities Business Operator and Derivatives Business Operator (No. ) (the “Draft”) from 22 January 2024 to 6 February 2024.

The SEC Office has introduced the NVDR for a very long time since the enactment of the Notification of the Capital Market Supervisory Board regarding the Offering of Non-Voting Depositary Receipt by the Subsidiary of the Stock Exchange of Thailand. The purpose of this piece of legislation is clear that the legislation is to allow those who are considered as foreigners to invest in the Thai stock market without being obstructed by the foreigner limitation and enjoy monetary benefits, such as dividends, while the downside is to have no voting rights that would normally derive from such investment.

Nevertheless, the SEC Office was alerted by a growing number of Thai shareholders who have invested in NVDR, in which, in the year 2023,

the number of Thai investors greatly exceeded those of foreign investors by 18,966 investors. This is not, by any means, the goal that the SEC Office wants to achieve by creating the NVDR.

Thus, to solve the problems, the SEC Office introduced the Draft as a potential solution, in which the critical elements of the Draft are provided below:

Firstly, the Draft allows the securities business operator (the “SBO”) to provide service for the customer that wants to buy NVDR and receives NVDR or securities transfer into NVDR for foreign customers or beneficiaries of the customers only. Secondly, in case a customer of the SBO is a foreign securities business operator, the SBO must also notify such foreign securities business operators of the aforementioned restrictions and make them disclose the identity of beneficiaries to the SBO every time that a service is used.

To this end, other than to help foreign investors investing in Thailand without being subject to foreigner limitation, the SEC Office provided that the Draft was to prevent Thai investors from abusing the NVDR to circumvent related rules and hide their shareholding and also to ensure that correct and sufficient information is provided to the investors.

**Office of Securities and Exchange Commission (“SEC Office”) has a public hearing on draft of notifications related to securities offering of the listed company in accordance with reorganization plan**

The SEC Office opened the public hearing on the Principle and Drafts of the SEC Office’s Notifications Related to Securities Offering of the Listed Company under the Reorganization Plan Approved by the Court under Bankruptcy Law (“Company”) (collectively called “Drafts”) from 24 January 2024 to 22 February 2024.

At present, there is more creativity than ever regarding how the Company can be reorganized by using securities offerings. So, to match the

variety of reorganization and facilitation of the process, the SEC Office comes up with an alternative financing option for the Company in addition to the existing way of financing.

In brief, the core concept sets out that if the Company conforms with the disclosure rules in accordance with the regulations of the SEC Office, the Company may offer securities as per the reorganization plan. The benefits of this process are, for example, that there are fewer steps required to do securities offering and that the Company shall receive a fee exemption.

Moreover, these rules do not compromise investor protection because, still, a disclosure of material information must be made and there must be a qualified financial advisor in making a registration statement and a draft prospectus as well.

**Thai SEC Allegations Against Former CEO of a company**

The Securities and Exchange Commission (“SEC”) filed a criminal complaint with the Economic Crime Suppression Division (“ECD Police”) against a former CEO of a company in Thailand, alleging the dissemination of false statements to the public. The SEC’s investigation focused on a reward service tied to a Wallet on a digital asset exchange platform. In March 2022, changes to terms via An Asia triggered the suspension of the Wallet services in Thailand. The SEC discovered digital assets from the A Wallet were transferred abroad prior to the announced changes, contradicting the company’s public communication. Consequently, the SEC accused the company of fraud and its former CEO of violating Section 82 of the Digital Asset Decree of A.D. 2018. Section 82 stipulates imprisonment and fines for individuals deceiving the public through false statements. The SEC filed a complaint with the ECD Police for further legal action. Concurrently, the SEC mandated One to One Contacts (“OTO”) to disclose details of a capital increase involving the first company and the second company, following concerns

raised by an independent financial advisor regarding transaction prices. OTO plans to seek shareholder approval for a private placement issuance to fund share acquisitions of the first company and the second company at an extraordinary meeting of shareholders on 19 February 2024.

## **TAXATION**

### **The Revenue Department Issues a New Notification on Income Tax Exemption**

The Revenue Department (“RD”) issued the Notification (“Notification”) on 29 December 2023, regarding income tax exemption on actual amount income paid for buying goods or services in Thailand during 1 January 2024 and 15 February 2024 for up to THB 50,000. In exercising the right of income tax exemption, an income earner shall provide the e-tax invoice or e-receipt as evidence of payment where such evidence shall be prepared by a VAT registered operator or a person responsible for issuing receipts to a person whose name has been mentioned. This exemption is only applicable to the income earner who is a natural person. The formal requirement is that the income earner shall buy and pay for goods or services in Thailand during 1 January 2024 and 15 February 2024.

### **Tax reduction on spirits and wines in 2024**

Thailand has been imposing high rate of excise tax on alcoholic beverage, especially on wine and local liquor products. However, in 2024, a new amendment to this regulation will be made in order to reduce the tax rate for the purpose of supporting the economic growth in the tourism sector.

There will be a major reduction on the excise tax rate applied to wines and spirits. The wine import duties will be exempted from the current rate of 54-60 percent and the wine tax will be lowered to 5 percent from 10 percent. The local spirits will be exempted from the current rate of 10 percent. Additionally, the Ministry of Finance is planning

to lower the tax on entertainment places to 5 percent from the current rate of 10 percent, which will remain in force until 31 December 2024.

In addition, the price tier system will be removed, and the flat rate of 5 percent will be applied instead for wines and sparkling wines. It is planning to reduce the excise tax on wine from the current rate of 1500 Baht per one liter to 1000 Baht per liter, which could possibly make wines more affordable. And for the fruit wines, the tax rate will be lower to 900 Baht per one liter. Currently, an additional 10 percent on the products with prices exceeding 1000 Baht. Also, the import duty on importing wines will be exempted for a period of one year provided that wine imported from all countries is eligible to receive the duty exemption, regardless of free trade agreements.

### **The Draft of Royal Decree on Value-Added Tax (“VAT”) exemption on digital asset trading has been approved by the Thai Cabinet**

The Draft of Royal Decree to enhance and extend tax exemption measures was approved by Thai Cabinet. The Draft will extend VAT exemptions for the transfer of cryptocurrency or digital token on exchange including adding the VAT exemptions for the transfer of cryptocurrency or digital token through licensed brokers and dealers under the supervision of the Office of Securities and Exchange Commission (“SEC Office”), which shall be effective from 1 January 2024 with no expiration date. Such approval is a significant step forward in the regulation and taxation of digital assets in Thailand.

In addition, the transfers of digital investment tokens are still exempt from corporate income tax and VAT for companies and registered partnerships as specified in the Royal Decree No.779 which is effective from 16 August 2023 onwards.

## **TRANSPORTATION**

### **The Thai cabinet (“Cabinet”) approved the draft to relax documents requirement for transport business license**

The Cabinet approved the draft of ministerial regulation (No. - ) under the Land Transport Act B.E. 2522 (A.D. 1979) (the “Draft”) on 9 January 2024.

To give a context, the Land Transport Act B.E. 2522 (A.D. 1979) (the “Act”) requires a license from the official to operate fixed route transport, non-fixed route transport, transport by a small vehicle, or private transport and its subordinate legislation provides that the applicant must prepare the documents for application, including an identify card of a Thai director and a certificate of residence of a foreign director , in case that a director is a foreigner .

The Draft that was approved would see that the a foreigner can use a passport in addition to an alien identification card, with the reason that a foreigner might not always have an alien identification card. Moreover, in case a company is an applicant, a house registration for a Thai and a residence certificate for a foreigner who is a director is not required is no longer required for an application for a license or an application for renewal of a license to operate fixed route transport, non-fixed route transport, a transport by a small vehicle, or a private transport. Additionally, in t case that a private company or public limited company is an applicant, the name of every director is not required anymore.

These are done with the view that some of the documents required for an application are beyond necessity in determining qualifications of the applicant. For example, the name of every director in the private company or the public limited company is not necessary as the name can be checked with an affidavit of the company , or the house registration and the residence certificate of the authorized directors are not

necessary for contacting the private company or the public limited company.

### **Incentives for EV trucks**

The incentives on large trucks and buses to battery electric vehicles (BEVs) was approved by the National Electric Vehicle Policy Committee (EV Board), in order to motivate companies to transition their commercial fleets. The tax incentive (tax deduction) is granted to eligible companies for supporting the use of electric buses and trucks, effective until 31 December 2025. The electric trucks for commercial use such as container trucks, electric buses, both air-conditioned and open-air is included in the eligible large EVs for the incentives.

Thailand supports business efforts to reduce pollution from the transport and manufacturing sectors as evidenced by many policies issued by the government. Moreover, Thailand is the first country in Southeast Asia to offer special incentives for the entire supply side and demand side. The “30@30” policy is one of the policies regarding the pollution reduction, which targets that at least 30% of the cars produced in Thailand be EVs by 2030.

In case of buying vehicles manufactured domestically, the companies can deduct expenses of two times the actual price of the vehicles, without a price ceiling. In case that the companies buy the imported vehicles, the deduction rate is 1.5 times of the vehicle price.

### **Solving the influx of cheap goods**

The small local producers of household goods have been damaged by the influx of the cheap foreign products into Thai markets.

Because of a tax and tariff waiver, foreign products has been flooded into Thai market. Thailand waived the import duty and VAT on imported parcels with combined prices and cost, insurance and freight fees of no more than 1,500 Baht per piece. More than 30 million parcels are shipped into Thailand and half of them, their price is lower than 1,500 Baht every year. There



are more than 20 industrial sectors, such as steel, aluminium, plastics, ceramics, petrochemicals and medicine. The small and medium-sized enterprises (SMEs) is facing with the most negative effect.

For steel industry, the capacity utilization in the industry has been decreased due to a slow economic recovery and also the low-priced steel from a foreign country . Moreover, the dumping steel wire rods into Thailand is one of the factors for causing the decrease of the capacity utilization. Household goods also has been affected by the foreign product, especially via e-commerce platforms.

The anti-dumping and anti-circumvention measures, beefing up customs inspections of imported goods, and expediting the establishment of standards for industrial products shall be enforced in order to protect local businesses. Moreover, the VAT exemption of imported goods at 1,500 baht or less shall be reviewed and the tax collection shall be started from the first Baht.

### **Utility Green Tariff**

The Notification of the Energy Regulatory Commission of Thailand (ERC) re: Criteria for Determining Utility Green Tariff (“UGT”) B.E. 2566 (A.D. 2023) was published in the Royal Gazette on January 8, 2024 with an effective date of 9 January 2024 however, the Notification only specifies the general structure of the UGT system. The public hearing regarding the rate of UGT was in the process of public hearing from 16 to 31 January 2024.

The new tariff is divided into GUT 1 and GUT 2. For GUT 1, it is the rate for six hydropower plants operated by the Electricity Generating Authority of Thailand. For GUT 2, it is the rate for new clean power developers. GUT 1 rates are slightly higher than the current power tariff of 4.18 Baht per Kilowatt-hour and the rate of GUT

2 are estimated to be in the range of 4.55–4.56 Baht per unit. However, the final rate is expected to be announced as soon as practicable. The full adaptation of the UGT may take two years.

The UGT will be consistent with international laws and regulations, for example, the enforcement of the Carbon Border Adjustment Mechanism (CBAM) of the European Union (EU) on 1 October 2023. It is a requirement for manufacturers in Thailand who export certain products to the EU to comply with CBAM.

Should you have any question, please do not hesitate to contact us via [info@bglballaw.com](mailto:info@bglballaw.com)

