NEWSLETTER

5 JULY 2017

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Emergency Decree on Foreigner Employment Administration Comes into Force

The Emergency Decree on Foreigner Employment Administration B.E. 2560 (A.D. 2017) (the "**Emergency Decree**") was issued on 17th June 2017 and was published in the Royal Gazette on 22nd June 2017 and came into force on and from **23rd June 2017**. It repealed the Foreigner Employment Act B.E. 2551 (A.D. 2008) and the Emergency Decree on Bringing Foreigners to Work in the Kingdom B.E. 2559 (A.D. 2016). Its main objective is to have clear and complete requirements and procedures for protection of foreign employees and to create labor, economic and social security on an urgent basis. It establishes the Committee on Foreigner Employment Administration Policy consisting of 20 members from the public sector and 8 members from the private sector. The Committee has power and duty to prepare policies and strategies for administration of foreigner employment and supervise their implementation. The Emergency Decree also establishes the Foreigner Employment Administration Fund. The official fees received under the Emergency Decree and other assets of the Fund are not included in the State revenues. The Fund must use its money mainly for helping foreign workers whose rights are violated under the labour law, for sending them back to their home countries and for supporting projects or work plans related to employment administration, welfares, education, public health and protection of foreign workers.

The employer who wants to hire a foreigner must obtain permission from the Department of Employment and place a guarantee. If the employer terminates employment of a foreign worker or if he resigns or if his employment contract expires, the employer must arrange for him to return to his home country within 7 days and send a report to the Department of Employment within 7 days.

One of most controversial issues under the Emergency Decree is the harsh penalties, imposed on the employer and the foreigner, such as a fine of THB400,000 to THB800,000 against the employer for hiring a foreigner without a work permit and imprisonment up to 5 years and/or a fine up to THB100,000 against a foreigner for working without a work permit.

In response to the heavy criticism from the public and the exodus of over 30,000 foreign workers leaving Thailand within a week after 23rd June 2017, on 4th July 2017, the National Council for Peace and Order (the "**NCPO**") issued its Order No. 33/2560 to defer the enforcement of Sections 101, 102, 119 and 122 of the Emergency Decree and they will not be enforced until 1st January 2018. The Order is effective retroactively from 23rd June 2017.



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NEWSLETTER

5 JULY 2017

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Application of Some Laws Waived for Thai-Chinese High Speed Train Project

On 15th June 2017, the National Council for Peace and Order ("**NCPO**") issued Order No. 30/2560 (the "**Order**") to waive application of 10 laws and regulations to help speeding up the Bangkok-Nakhon Ratchasima Thai-Chinese High Speed Train Project ("**Project**"). The Order was published in the Royal Gazette on 15th June 2017 and has become effective on and from 15th June 2017. The laws and regulations waived by the Order are shown below.

Under the Order, the State Railway of Thailand ("**SRT**") is required to sign a service procurement contract with agents of the Chinese state enterprises who have experiences on high speed train development holding certification of quality and efficiency from the National Development and Reform Commission of the China People's Republic ("**NDRC**") to develop the Project. The services consist of (1) the civil work design for infrastructure, (2) the consulting and supervising services for the civil infrastructure, (3) the rail system, electric and mechanical systems including procurement of trains and personnel training.

The NDRC and its personnel both natural persons and legal entities are exempted from holding engineering and architect licenses and permits under the Engineering Act B.E. 2542 and the Architect Act B.E. 2543.

The SRT is required to determine the value, service fees and expenses of the Project and conclude the contract with NDRC within 120 days from the effective date of the Order based the results of past negotiations between the SRT and resolutions of the Cabinet and the meetings of Thai-Chinese Joint Committee on Railroad Project.

The laws and regulations waived are:

1. The Engineer Act B.E. 2542 (A.D. 1999), Sections 45, 47 and 49
2. The Architect Act B.E. 2543 (A.D. 2000), Sections 45, 47 and 49
3. Act on Public and Private Sector Joint Venture in State Undertakings B.E. 2556 (A.D. 2013), Sections related to private sector operator and bidding
4. Act on the Offenses Relating to the Submission of Bids to Government Agencies B.E. 2542 (A.D. 1999), Section 10
5. Government Procurement and Supplies Management Act B.E. 2560 (A.D. 2017), all sections
6. NCPO Order No. 11/2017 dated 23rd February 2017, all sections
7. Regulations of the Office of the Prime Minister on Procurement B.E. 2535 (A.D. 1992) as amended, all sections
8. Regulations of the Office of the Prime Minister on Government Procurement by Electronic Methods B.E. 2549 (A.D. 2006), all sections
9. Regulations of the State Railway of Thailand on Procurement B.E. 2544 (A.D. 2001), all sections
10. Regulations of the State Railway of Thailand on and Parcels B.E. 2544 (A.D. 2001), all sections.



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5 JULY 2017

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Tobacco Products Control Act of Thailand Comes into Force

The Tobacco Product Control Act B.E. 2560 ("**TPCA**") was enacted by the National Legislative Assembly ("**NLA**"). It was published in the Royal Gazette on 5th April 2017 and will become effective on and from 5th July 2017. It has replaced the Tobacco Products Control Act B.E. 2535 (A.D. 1992) and the Non-Smokers Health Protection Act B.E. 2535 (A.D. 1992).

The TPCA prohibits sales of Tobacco Products ("**TP**") to the under aged (younger than 20 years) and it controls channels and manners of whole sales and retail sales and promotion of TP. Any advertising or marketing communication of TP is banned. Advertising of any other goods that bears name or mark of TP or its abbreviation, modification or adaptation is prohibited.

The name or mark of TP or the name or mark of its manufacturer or importer or any symbol or any other things cannot be shown on any media for the purpose of advertising of TP. This restriction also applies to showing such name or mark on any other products or showing any abbreviation, modification or adaptation of such name or mark for advertising of TP or advertising of such name or mark for the purpose of advertising of TP.

The manufacturer or importer of TP for sales in Thailand is required to ensure that TP itself and its packaging are made in the size, color, symbol, label including a display of trademark, symbol, picture and text in compliance with the rules, procedures and conditions announced by the Minister of Public Health in its Ministerial Regulations per recommendation of the National Tobacco Product Control Board ("**NTPCB**"). Any TP not presented in the packaging or not displaying a trademark, symbol, picture and text as required by the Ministerial Regulations of the Minister of Public Health is not allowed for sales.

The NTPCB may recommend amendment of such announcement of the Ministry every two years from the effective date of the TPCA or in a shorter period in case of necessity.

Currently, there is no Ministerial Regulations issued by the Ministry of Public Health under the TPCA. The Ministerial Regulations issued under the Tobacco Products Control Act of 1992 and the Non-Smokers Health Protection Act remain applicable until replaced by the Ministerial Regulations issued under the TPCA.



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5 JULY 2017

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Thailand's Draft Cyber Security Bill Open for Public Hearing

Thailand's Ministry of Digital Economy and Society ("**MDES**") recently published the latest draft of the Cyber Security Bill (the "**Bill**") for public hearing and public consultation during 24th May 2017 to 7th June 2017 before the MDES revises the Bill and submits it to the National Legislative Assembly ("**NLA**") for approval. The bill will ensure both public and private organizations take greater responsibility for cyber security which will support the digital ecosystem. It is one of the six pending draft bills related to digital economy laws that need to be approved by the NLA to accomplish the implementation of the country's digital economy roadmap.

There are some significant changes which were made to the Bill comparing to the version of the Bill that was previously endorsed by the Cabinet. The Bill as published by the MDES will establish the National Cyber-security Committee ("**NCSC**") with the Prime Minister as the President of the NCSC, Minister of Defense as the first Vice President and Minister of MDES as the second Vice President.

Under the Bill, the NCSC is to set standards for cyber security which means that companies operating in Thailand can be forced to implement surveillance standards set by the NCSC.

The Bill also grants authority to the NCSC to order the private sector to do anything or refrain from doing anything if they deem that something is a threat to cyber security.

Importantly, under the Bill, the NCSC will also have authority to authorize an official to access private communication information in the form of post, telex, telephone, fax, computer, electronic communication devices and media, or any other information technology media for the purpose of securing the cyber security and avoiding or at least mitigating the damages that may be caused by such cyber security threat, upon obtaining a court order. In case of emergency, the NCSC is allowed to access the private communication information without the court order and report such access to the court afterwards without delay.

Additionally, an authorized official may order public or private entity or any individual to give testimony or submit a statement or any other documents to be examined by the NCSC or used as the information for any action under the Bill.

The published Bill is not its final version to be submitted to the NLA for their approval. Once the Bill is submitted to the NLA, we will update readers on its development in future issues of our newsletters.



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5 JULY 2017

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E-Filing System of Thai Courts Introduced for Civil Cases

The Directive of the President of the Supreme Court on Submitting, Sending, and Receiving Pleadings and Documents via the Electronic Filing System (the "**Directive**") was published in the Royal Gazette on 4th May 2017 and has come into force on and from 5th May 2017. The Announcement of the Office of the Judiciary for the implementation of the Directive (the "**Announcement**") was issued and has become effective since 5th May 2017.

The Directive and the Announcement allow lawyers and litigants to file court pleadings and related documents with the court electronically via the E-filing system of the court. Currently, the E-filing system of the court is permitted only for disputes over sales, leases, mortgages, pledges, guarantee contracts, loan contracts, hire-purchases, and credit card disputes. In the first period of using this E-filing system, only lawyers are allowed to submitting, sending, and receiving pleadings and documents via the court e-filing system. There may be a subsequent Directive of the President of the Supreme Court or Announcement of the Office of the Judiciary to allow the e-filing system for other types of disputes.

The Directive also allows required court fees and trial expenses to be paid online via credit card or debit card, bank transfer, or other method specified in the Announcement of the Office of the Judiciary. This is to support and promote the e-payment system.

A lawyer or a litigant who would like to use the e-filing system of the court under the Directive and the Announcement must submit an application and get registered with the court. The registration must be renewed every 3 years.

A lawyer or a litigant who uses the e-filing system of the court will be notified of the issuance of a court order or notification of the status of the court proceedings by SMS or e-mail while details of the court order or notification are available in the online system where account log-in is needed. Any order or notification of the court sent via online system is deemed to be known by the recipient once the period of 3 days from the date of sending the order or notification passes.

Currently, there are three courts which offer the e-filing system, i.e. the Civil Court (Bangkok), the Thon Buri Civil Court, and the South Bangkok Civil Court. The implementation of the e-filing system of other courts will be announced later.



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Foreign Owned Companies in Myanmar Can Now Import and Trade Some Goods

On the 12th of June 2017, the Ministry of Commerce of Myanmar has issued Notification No. 36/2017 allowing foreign owned companies to import and trade fertilizers, seeds, pesticides, hospital equipment and construction materials as prescribed under the relevant WTO HS codes, subject to obtaining a permit to trade from the Directorate of Investment and Company Administration (DICA) and an import license from the Ministry of Commerce.

The goods allowed for import and trade by foreign owned companies are subject to future changes depending on the domestic demand, the market conditions and the competition with local Myanmar businesses.

Previously, only Myanmar wholly-owned companies were allowed to import and trade such goods. Under the Myanmar Companies Act 1914, a foreign owned company means any company where at least one share is owned by a non-Myanmar national.



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