



Dear Readers,  
This E-Bulletin summarizes important recent legal changes in Singapore and Thailand, including:

**SINGAPORE:**

- Singapore joins “BEPS”

**THAILAND:**

- Change of Foreign Business License Requirement
- New Customs Act
- New Competition Law
- New E-Work Permit
- Amended Computer Crimes Act
- New deadline for dividend payments
- Criminal liability of company directors

Best regards,

**RESPONDEK & FAN**

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**SINGAPORE:**

**Singapore Joins Inclusive Framework for Implementing Measures against “Base Erosion and Profit Shifting (BEPS)”**

On 07. June 2017 Singapore signed an international convention that commits countries to implementing measures to clamp down on corporate tax avoidance. This convention seeks to facilitate the efficient updating of existing avoidance of double taxation agreement which will bring about changes to the existing double taxation agreements as well as resulting to impact on multinational enterprises and businesses in Singapore.

Singapore supports the key principles underlying the BEPS Project, namely that profits should be taxed where the real economic activities generating the profits are performed and where value is created. As a BEPS Associate, Singapore will work with other jurisdictions to help develop the implementation and monitoring phase of the BEPS Project. Singapore is

committed to implementing the four minimum standards under the BEPS Project, namely (i) the standards on countering harmful tax practices, (ii) preventing treaty abuse, (iii) transfer pricing documentation, and (iv) enhancing dispute resolution. In keeping with this commitment and after consulting Singapore-headquartered multinational enterprises, Singapore intends to implement Country-by-Country Reporting (“CbCR”) for these enterprises for financial years beginning on or after 1 Jan 2017.

CbCR is of particular interest to most multinational companies as it will provide an overview of a company’s global profit allocation in relation to its various operations in various countries.

The signing of the BEPS will put Singapore’s double taxation agreements in line with international standards and increase access to benefits such as certainty and efficient dispute resolution mechanisms. Clarification on the amendments to each double taxation agreements will be provided to taxpayers through the IRAS website

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<https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2016/Singapore-Joins-Inclusive-Framework-for-Implementing-Measures-against-Base-Erosion-and-Profit-Shifting--BEPS-Δ>.

### **THAILAND: Foreign Business License no longer required for Government Contractors and Representative Offices**

According to a new Regulation of the Ministry of Commerce that became effective on 9 June 2017, service businesses under a contract with a government authority or public enterprise as well as a foreign juristic person's representative offices in the area of international trade business that used to require a Foreign Business License are now under a more "relaxed" regulatory requirements. I.e. the investor/contractor is now only required to notify their business operations to the Ministry of Commerce to obtain a registration number. Under the new regulations, this process is supposed to take only one day, whereas the previous application process for a formal Foreign Business License took approximately 4 to 6 months.

### **THAILAND: New Customs Act**

The new Customs Act B.E. 2560 (2017) was published on 17 May 2017 and will come into effect on 13 November 2017, replacing the current Customs Act from 1926, which has long been

outdated in many aspects. The major amendments include an elimination of liability presumptions, a decrease of criminal fines and a decrease of whistle blower rewards (caps at THB 5 million), revised methods for calculating criminal fines and clear timelines for post-clearance audits and Board of Appeal reviews.

The previous regulations with uncapped rewards for whistle-blowers and audit teams and with excessive fines for taxpayers in case of wrongdoings sometimes led to an overly aggressive approach of the customs authorities and in many cases forced taxpayers into settlements with the authorities. The amendments will make the Customs Act overall fairer and in many respect less ambiguous and the outcome of investigations more predictable.

### **THAILAND: New E-Work Permit**

The Ministry of Labour has issued a Ministerial Regulation for the implementation of so-called "E-Work Permits" that came into effect on 1 April 2017. The current paper work permit (the so-called "blue book") will be replaced by credit card sized ID cards. The E-Work Permit will contain the information currently contained in the blue book, plus additional security and fraud prevention features. Furthermore, a copy of such data can also be downloaded to the applicant's mobile device. The first E-Work Permits are expected to be issued as early as October 2017 which will firstly be available only to employees of companies



promoted by the Board of Investment.

### **THAILAND: The Amended Computer Crimes Act - Important Changes for Business Operators**

The “Act Governing Commission of Offences Relating to Computers” (generally known as the “Computer Crimes Act”) was amended with effect of 24. May 2017. The Act is important for all businesses that use computers in their operations and business owners in Thailand should be aware of potential criminal implications when their business operations involve computer data or a computer systems:

- **Spam Emails**

Under the amended Act, a business may face criminal punishment if it sends computer data or emails that cause trouble or annoyance to recipients without an option to allow the recipient to easily cancel, unsubscribe, or inform the sender to cease sending further emails or computer data. The penalty for such actions is a maximum fine of THB 200,000.

- **Greater Penalties for Hackers**

The new Act has increased the severity of criminal penalties to offenders who use a computer in crimes against businesses or use computer systems that involve national security, public safety, national economic security, or infrastructure that concerns the public interest. The fines reach from THB 20,000 to THB 140,000 and imprisonment from one to seven years.

- **False Information**

An offender who dishonestly or deceitfully brings false, distorted, or forged information or data into a computer system in such a way that is likely to cause damage to the public will face imprisonment not exceeding three years or a fine not exceeding THB 60,000, or both.

- **Service Providers**

Any service provider that cooperates with, consents to, or connives to certain offenses under the amended Act, such as dishonestly or deceitfully bringing false, distorted, or forged information or data into a computer system under the service provider’s control, will face criminal penalties.

Moreover, the Minister has the authority to appoint a computer data screening panel to screen data in the event of circulating computer data that constitute a crime under the Act, affecting the security of Thailand, or conflict with peace and public order or good morals.

### **THAILAND: New Time Limit for Dividend Payments by Private Limited Companies**

The National Council for Peace and Order (“NCPO”) has passed the Order 21/2560 to amend laws which pertain to doing business in Thailand. Hereby limited liability companies and their directors need to be aware of new conditions which are contained in Section 1201 of the Civil and Commercial Code. It is now required that private limited companies must pay dividends within one month from the date of resolution decided by a shareholders’ meeting or board of



directors' meeting. Previously no such statutory deadline existed. The order entered into force on 04. April 2017.

Failing to comply with the law may be subject to penalties. The penalties include a maximum fine of THB 20,000 for limited liability companies or a maximum fine of THB 50,000 for directors, managers or any other person responsible for the limited liability company. This will also apply to persons who had a duty to issue an order or to take an action, but failed to do so, he/she may also have to face penalties under the new law.

#### **THAILAND: New Competition Law**

The draft Trade Competition Act B.E. 2560 (2017) has been submitted to the Secretariat of the Cabinet on 18 April 2017. The new Act will come into effect on 05. October 2017. Thereafter, implementing rules will be adopted which will be issued within 365 days from the effective date of the new Act.

The first trade Competition Board must be appointed within 27 days from the date the new law comes into effect. The current trade Competition Board will remain in position until the new board is appointed. There are several substantial changes under the new Act which investors need to be aware of. For instance, under the new Act State owned enterprises will have narrower exemptions. Furthermore, the new Act imposes new rules which cover issues of anti-competitive agreements, abuse of dominance as well as new anti-competitive misconduct such as prohibition against agreements between domestic

and offshore operators.

The New Act distinguishes "hard-core cartels" and "non hard-core arrangements". "Hard-core" cartels would only apply to agreements between competitors leading to price fixing, market allocation, output control or bid rigging. Anti-competitive agreements between business operators that have 'a relationship in policy or control' are exempted from both hard-core and non hard-core arrangements. This exemption seems intended to capture arrangements between companies that are part of the same group, as is usually the case abroad.

The Trade Competition Act provides a list of unfair trade practices including (i) unfair obstruction of business operations; (ii) abuse of superior market or bargaining power; (iii) imposing unfair trading conditions; and (iv) any other practices to be determined by the Commission.

Furthermore, the Act also introduces a new anticompetitive prohibition against agreements between domestic and offshore operators, which would create monopoly or unfair trade restrictions and severely damage the economy and the consumers as a whole.

Particularly noteworthy is a dual merger control system included in the new Act:

- i) In the event that dominance or monopoly power may be entailed by a merger or acquisition (i.e. consolidation) the Commission has to grant pre-merger approval.
- ii) If a consolidation may materially result in a reduction of competition in any relevant

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market, a post-merger notification needs to be issued to the Commission.

Signifying another crucial change, the new Act also provides the Commission with the power to impose administrative fines on its own without court proceedings. Furthermore, the new Act imposes stronger rules on liabilities of directors and management adding that not only managing directors but also other persons who are “responsible for the operations of that legal entity” may be subject to the same criminal and administrative sanctions.

**THAILAND: Criminal liability of company directors**

Many laws in Thailand contain a provision stating that in the event an entity commits an offense, its directors, managers, or the persons responsible for the business operations of that entity will be criminally and personally liable on the same grounds. However this strict liability presumption was successfully challenged in a landmark decision by the Thai Constitutional Court (No. 12/255). The new Act is a consequence of this decision.

The new “Act on Amendments to Criminal Liabilities of representatives of a Legal Entity” specifies the conditions under which these individuals will now incur criminal liability. Previously there was a presumption that directors, managers and other officers of a legal entity were criminally liable, together with the entity they represented, for offences by the legal entity. Under the new Act company representatives will only incur criminal liability if (i) the offence by the legal entity results from the instructions or actions of

the representative, or (ii) the representative has a duty to give instructions or act but he/she omits to do so, which results in such legal entity committing an offence.

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