



Dear Readers,

This E-Bulletin provides an overview of important statutory changes in Thailand as follows:

- Amendments to the Civil and Commercial Code
- Update on amendments to Data Protection Act
- New BOI Guidelines on Foreign Experts
- New Cannabis Regulations
- COVID 19 statutory update

We appreciate your feedback and look forward to hearing from you.

Best regards,  
**RESPONDEK & FAN**  
Dr Andreas Respondek  
Managing Director

Ms. Sutthida  
Norasarn

Ms. Chonlita  
Saikandok



**THAILAND**

**1. Thailand’s Cabinet Approves Amendments to Thailand’s Civil and Commercial Code including New Merger Provisions.**

The Ministry of Commerce recently proposed a number of amendments to Thailand’s Civil and Commercial Code (“TCCC”) for the purposes of streamlining the operational processes of companies and partnerships under certain provisions set out therein (“Proposed Amendments”). Apart from the aforesaid purposes, the Proposed Amendments will also help cut through red tape, ease some regulatory requirements for running a business in Thailand and allow current technologies to be adopted for corporate operations.

The Proposed Amendments were proposed in 2 sets. The first and second set of the Proposed Amendments were approved by Thailand’s Cabinet on June 9th and June 23rd, 2020 respectively. After that, they will be sent to the House of Representatives for a vote before being

officially promulgated in the Government Gazette. A summary of both sets of the Proposed Amendments is set out below.

**The first set of the Proposed Amendments**

**(i) Registration process for partnerships and companies**

For companies and partnerships, regardless of the location of the partnership or company, applications for registration and subsequent corporate changes may now be submitted at any approved Office of the Company and Partnership Registration, Department of Business Development, Ministry of Commerce (DBD). For a company’s memorandum of association which currently will expire if the company is not incorporated within 10 years after registration, under the amended TCCC, it will automatically expire if the company is not incorporated within 3 years after registration.

In case a company’s memorandum of association was registered more than 3 years ago upon the effective date of the

**SINGAPORE Office**

1 North Bridge Road  
#16-03 High Street Centre  
Singapore 179094

Tel: +65-6324-0060 Fax: +65-6324-0223

**THAILAND Office**

323 Silom Road, United Center,  
39th Floor, Suite 3904 B  
Bangkok 10500

Tel: +66-2-635-5498 Fax: +66-2-635-5499



above amendments, but the company is still not yet incorporated, the incorporation of the company shall be done within 180 days from the effective date of the above amendments.

#### **(ii) Seal affixed to share certificates**

In case a company has its own seal (its seal was registered with the DBD), the seal shall be affixed to all share certificates issued by the company.

#### **(iii) E-meeting procedures**

Unless otherwise prohibited in a company's articles of association and subject to the relevant Ministerial Regulations, electronic meetings (e-meetings) of directors of companies are permitted in principle, which directors who attend the meetings via electronic means shall be included in quorums of the meetings and have the right to vote. The purpose of these new amendments is to formalize approval for e-meetings given under the Royal Decree on Teleconferences through Electronic Means B.E. 2563 (2020) in April 2020.

#### **(iv) Company meeting notification**

Notices to call for company meetings will not need to be published in a local newspaper under the amended TCCC anymore, except when the company has bearer share certificates. However, the requirement to mail notices to all shareholders via return-receipt post will still remain.

### **The second set of the Proposed Amendments**

#### **(i) Company Formation, Quorum Requirements for Shareholders' Meetings and Court Ordered Dissolutions**

A minimum number of individual persons required

to form a company in Thailand (known as "promoter") and a minimum number of shareholders that a company shall maintain at all times under the amended TCCC are 2 (reduced from the current 3 individual persons/shareholders required). However, the promoters will become the company's initial shareholders once the company is formed. The purpose of these amendments is to simplify the company formation process to cater to small businesses and start-up enterprises which cannot always manage to find up to 3 individual persons/shareholders to form/operate the company as required under the current TCCC.

In addition, the Proposed Amendments further provide that a minimum of at least two shareholders (or their proxies) must be present at any shareholders' meetings in order to constitute a quorum. In case the number of a company's shareholders is reduced to 1 (i.e. a single shareholder), a company can be dissolved by court order.

It should be noted that a "Single-Person Company Act" is currently being considered by the Council of State, but is not expected to be enacted any time soon.

#### **(ii) Period for Payment of Shareholders' Dividends**

Under the amended TCCC, shareholder dividends must be paid within 1 month from the date that a shareholders' meeting or the board of directors' meeting of a company adopts a resolution to pay such shareholder dividends, as the case may be.



### (iii) New Merger Provisions

Currently, the TCCC only recognizes company amalgamations i.e. the formation of a new company through the combination of two or more companies so that there will be an entirely new company formed (A+B=C) whereas the amendments offer a merger as an alternative, whereby a one company is merged into the other company so that either one of these companies will survive as a legal entity but the other one will be liquidated (A+B = either A or B).

## 2. Update on Thailand's Personal Data Protection Act B.E. 2562 (2019)

Thailand's Personal Data Protection Act B.E. 2562 (2019) ("PDPA") came into effect on May 27th, 2020. However, because of the COVID-19 outbreak, there are still some chapters under the PDPA, which still do not apply to those affected businesses (Royal Decree B.E. 2563 (2020) dated May 21st, 2020 ("Royal Decree"). These exemptions are for instance: Chapter 2 (Personal Data Protection), Chapter 3 (Rights of Data Subject), Chapter 5 (Complaints), Chapter 6 (Civil Liability), Chapter 7 (Penalties) and Section 95 (grandfather clause or transitional clause regarding data collection and use prior to the enforcement of the PDPA). This Royal Decree granting exemption to those affected businesses is effective from May 27th, 2020 until May 31st, 2021 in order to allow more flexibility for the affected businesses to prepare themselves for compliance with the PDPA's full implementation in June 2021. The

affected businesses as listed under the Royal Decree consist of 22 business categories.

Nevertheless, in the meantime before the 22 aforesaid businesses will be fully subject to the PDPA in June 2021, the Thai Ministry of Digital Economy for Society ("MDES") released the Notification of the MDES Re: Personal Data Security Standards B.E. 2563 (2020) ("Notification") dated July 17th 2020, with effect from July 18th, 2020 until May 31st 2021. This notification sets out minimum standards for the personal data security measures covering administrative safeguard measures, technical safeguard measures and physical safeguard measures regarding the access to, or the control of the use of, personal data that all the 22 aforesaid businesses shall comply with ("Measures"), to the extent deemed appropriate in order to ensure that personal data under the 22 aforesaid businesses' control are adequately secured. We are expecting the full implementation of the PDPA to be in effect on June 1st, 2021.

Under the Notification, the 22 aforesaid businesses must designate their personal data security measures according to the Measures set out below:

1. Access control of personal data and devices for storing and processing personal data must be implemented, which the use and security shall be taken into consideration;
2. Criteria for designation of authorization and rights to access personal data must be set out;

#### SINGAPORE Office

1 North Bridge Road  
#16-03 High Street Centre  
Singapore 179094

Tel: +65-6324-0060 Fax: +65-6324-0223

#### THAILAND Office

323 Silom Road, United Center,  
39th Floor, Suite 3904 B  
Bangkok 10500

Tel: +66-2-635-5498 Fax: +66-2-635-5499



3. User access management must be put in place to control access to personal data by only authorized persons;
4. User responsibilities must be specified to prevent unauthorized access, disclosure, knowledge or duplication of personal data or theft of devices for storing or processing personal data; and
5. Procedures for monitoring records relating to past access, alteration, deletion or transfer of personal data must be set out in accordance with methods used in the collection, use or disclosure of personal data, *(Refer chart page 5 & 6)* provided that such 22 aforesaid businesses must inform their personnel, staff, employees or relevant persons about their personal data security measures and build awareness of the importance of personal data protection so that the said people strictly comply with such measures.

### **3. Thailand's Board of Investment ("BOI") Announces Qualification Guidelines on Foreign Experts for Promoted Businesses**

Pursuant to Sections 25 and 26 of the Investment Promotion Act B.E. 2520 (1977) ("BOI Act"), the Board of Investment ("BOI") grants BOI promoted companies the right to employ foreign

skilled workers and experts ("Foreign Experts") and the Foreign Experts' duration of stay granted will depend on the BOI's discretion regardless of what is prescribed under Thai immigration laws.

However, since there is no statutory definition of "Foreign Experts" statutorily prescribed in the BOI Act, the BOI has recently published a guideline on the criteria for granting positions to the Foreign Experts, the qualifications required from the Foreign Experts to work in the granted positions and the criteria for granting extensions of time to the Foreign Experts to continue working in the granted positions under each type of promoted business as follows (<https://www.boi.go.th/en/procedure-to-bring-in-foreign-experts> <https://www.boi.go.th/upload/content/5e270dbb003fc.pdf>):



<b>Foreign Experts</b>			
	<b>Executive Level</b>	<b>Management Level</b>	<b>Operation Level</b>
<b>Positions</b>  (including but not limited to)	Chairman, President, Vice President, CEO, Executive Director and Managing Director	Production Manager, Marketing Advisor, Assistant Production Manager and Project Leader	Production Supervisor, Project Coordinator, Electrical Engineer, IT programmer, Injection Mold Technician and Data Analyst
<b>Age</b>	At least 27 years old	At least 27 years old	At least 22 years old
<b>Years of Experience</b>	At least 5 years	At least 5 years	At least 2-5 years
<b>Promoted Work period</b>	<p>Generally, the Foreign Experts will be granted by the BOI a work period of 1-4 years for the title they are in (with a 1-4 year extension granted at a time), which a work period and duration of an extension granted will vary depending on the title and the type of promoted business that such title belongs to.</p> <p>For example, if the Foreign Experts work as scientific and technological researchers for either the manufacturing business or service business, they will be granted a maximum work period of 4 years at a time (with a maximum extension of 4 years each time). For titles under the Trade and Investment Support Office (TISO) and the International Business Center (IBC), a maximum work period of 1 and 4 years (with a maximum extension of 1 and 4 years each time) will be granted respectively.</p>		

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Tel: +66-2-635-5498 Fax: +66-2-635-5499



<b>Other Relevant Criteria</b>	<ul style="list-style-type: none"> <li>• Only senior-level digital technology specialists who receive a monthly salary of at least THB 75,000 will be eligible for employment in the software, digital technology service and e-commerce business which have acquired investment promotion from the BOI since February 2019.</li> <li>• For operators at workstations working for the International Business Process Outsourcing (IBPO) which has acquired investment promotion since March 2019, only foreigners at the age of 22 upwards with at least 2 years of experience or 3-month training relevant to the business acquired will be eligible for employment.</li> <li>• For operators at workstations working for the International Business Process Outsourcing (IBPO) which plans to apply for or is in the process of applying for investment promotion, or the IBPO that has acquired investment promotion since March 2019 but is in the process of submitting an application for increasing the number of workstations, only foreigners graduating with a Bachelor’s Degree or equivalent and training relevant to the business acquired, provided that their monthly salary is not less than THB 30,000, will be eligible for working as operators under the IBPO.</li> <li>• Once the business receives a promotion certificate and approval from the BOI for commencing operations, the promoted business must decrease the number of operational Foreign Experts as the BOI deems appropriate.</li> </ul>
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#16-03 High Street Centre  
Singapore 179094

Tel: +65-6324-0060 Fax: +65-6324-0223

**THAILAND Office**

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Bangkok 10500

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#### 4. New Cannabis Regulations

Cannabis has been controlled under Thai laws for a long time since the Cannabis Act B.E. 2477 (1934), the first regulation concerning cannabis. It was later classified as a category 5 narcotics under the Narcotics Act B.E. 2522 (1979) (“NA”), which was prohibited from being produced, distributed, imported, exported or possessed.

The NA was amended by the NA No. 7 B.E. 2562 (2019) (“Amendment”) in 2019. This Amendment marks the first relaxation of cannabis regulations and makes Thailand the first country in Southeast Asia who legalizes the use of cannabis for research and medical purposes. The Amendment stipulates that no person shall produce, import or export narcotics of category 5, unless it is necessary for the benefits of the government, medicine, medical treatment or research and development, including agriculture, commerce, science or industry for medical purposes, provided that such person must obtain a license granted by the Food and Drug Administration with the approval from the Narcotics Committee.

The Amendment sets forth 7 groups of persons who can apply for a license. In addition, there are other criteria that applicants must comply with, for example, the applicant must be a Thai national and domiciled in Thailand or a juristic person registered under Thai law.

On August 4th, 2020, Thailand’s Cabinet approved in principle a draft amendment to the NA as proposed by the Minister of Public Health, with the following key elements:

1. Patients who are certified by medical practitioners, Thai traditional medicine practitioners, applied Thai traditional medicine practitioners or folk doctors, business operators related to agricultural production and farmers who operate the production in cooperation with licensees who produce drugs or herbal products and other persons as prescribed by the Minister of Public Health with the approval from the Narcotics Control Committee, are able to produce, import, export, distribute or possess narcotics of category 5.
2. Business operators related to agricultural production are able to co-produce and develop recipes for traditional medicine or herbal medicine for medical purposes under the cooperation and supervision of licensees who produce modern medicine under the Drug Law or licensees who produce traditional medicine under the Drug Law or licensees who produce herbal products under the law on herbal products.

This draft amendment aims to increase access to the use of medical cannabis to enable people to participate in the development of medical cannabis



It is currently under scrutiny by the Council of State and will then be introduced to the House of Representatives for a vote.

## 5. Thailand: COVID-19 Statutory Updates

As Thailand is no exception to other countries, the economy has also been adversely affected by the pandemic. In order to alleviate the impact, several relief measures for both business operators and employees have been implemented:

### (i) Social Security Fund (“SSF”)

According to the Ministerial Regulation on unemployment benefits, unemployed employees are entitled to compensation due to the impact of economic conditions from March 1st, 2020 to February 28th, 2022, at the following rates:

- 70% of daily wages, but not exceeding 200 days for unemployment due to dismissal.
- 45% of daily wages, but not exceeding 90 days for unemployment due to resignation or termination of fixed-term employment contracts.

Furthermore, on September 14th, 2020, the Ministry of Labour’s announcement regarding the rules, procedures and conditions for the reduction of SSF contributions for both employers and employees under the COVID-19 pandemic was published in the Government Gazette. Thailand’s Cabinet approved a reduction of SSF contributions

for employers and employees under Section 33 of the Social Security Act (“SSA”) from 5% of income but not more than THB 750 to 2% of income but not more than THB 300 from September to November 2020. As for insured persons under Section 39 SSA, i.e. persons who previously worked in a private company and were insured under Section 33 and later ceased to be employees, such persons shall be entitled to a reduction in SSF contributions from THB 432 per month to THB 96 per month from September to November 2020.

### (ii) Thailand Board of Investment (“BOI”)

The BOI has introduced practical measures to support investment and businesses in Thailand as business operations and economic activities in times of crisis have been halted and affected by COVID-19. The medical sector, which normally receives 3-8 years of corporate income tax exemption, is entitled to an additional 50% corporate income tax reduction for 3 years. This measure covers only projects that applied for investment promotion between January 1st to June 30th, 2020, and must commence production and generate income by December 31st, 2020. Besides, 50% of output must be sold and donated domestically in 2020-2021.

### (iii) Taxes

With respect to taxes, several Royal Decrees issued under the Revenue Code on tax relief measures in





response to the COVID-19 were published in the Government Gazette as follows:

**Royal Decree No. 700:** Companies or juristic partnerships importing products for treatment, diagnosis or prevention of the COVID-19 to donate to government hospitals, other government agencies or public organizations or charities or medical facilities from March 1st, 2020 to February 28th, 2021 can claim Value Added Tax (“VAT”) exemption.

**Royal Decree No. 701:** Income tax and VAT exemption for individuals, companies and juristic partnerships who donate money or assets to the Office of the Permanent Secretary, Prime Minister Office via electronic donation system was granted with effect from March 5th, 2020 to March 5th, 2021 in order to encourage both individuals and entities to provide support for the government in dealing with the COVID-19 crisis. For individuals, income tax exemption will be equal to the amount of donation but not more than 10% of the assessable income after deducting expenses and deductions. As for companies or juristic partnerships, income tax exemption will be equal to the amount of donation but not more than 2% of the net profit plus expenses for public charity or public benefits.

**Royal Decree No. 707:** To assist small and medium-sized enterprises directly and indirectly affected by the COVID-19, companies or juristic

partnerships that meet the following criteria will be exempted from income tax in the amount of 50% of interest expenses incurred on loans under low-interest credit measures from April 1st to December 31st, 2020:

- Having income not exceeding THB 500 million in the last 12-month accounting period which the last day of that accounting period ends before or on September 30th, 2019; and
- Having no more than 200 employees in the aforementioned accounting period.