Recent Laws and Regulations Applicable to SMEs

EABC: SMEs Working Group Meeting

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Law on Work Permits for Foreign Employees

- Emergency Decree on Foreigner Employment Administration B.E. 2560 (A.D. 2017).
- Effective from 23rd June 2017.
- Foreigner Employment Administration Policy Committee (20 members from the public sector, 8 members from the private sector) is established to prepare policy and strategy for foreigner employment administration and to supervise their implementation.
- Employer who employs a foreigner must obtain permission from the Department of Employment and place a guarantee.
- Foreigner who works in Thailand without a work permit is subject to imprisonment up to 5 years or a fine up to THB100,000 or both (Section 101).
- Foreigner who works on a necessary and urgent work basis without notifying the DOE is subject to a fine of THB20,000 to THB100,000 (Section 119).
- Employer who hires a foreigner without a work permit or hires a foreigner to work on a prohibited or restricted work is subject to a fine between THB400,000 and THB800,000 per employee (Sections 102 and 122).
- Enforcement of Sections 101, 102, 119 and 122 is deferred by the NCPO Order No. 33/2560 dated 4th July 2017. They will be enforced from 1st January 2018.

Order of the National Council for Peace and Order ("NCPO") No. 21/2560 on Amendment of Laws to Facilitate the Ease of Doing Business

- Effective from 4th April 2017.
- Amendments to the Civil and Commercial Code ("CCC") and the Labour Protection Act ("LPA").
- Articles of Association of a company may include articles on procedures for settlement of a dispute that cannot be solved by its directors or shareholders.
- Share certificate can be signed by only one director.
- Payment of dividends must be made within one month from the date of approval by the BOD or AGM or EGM meeting.
- Company can be dissolved by a court order if maintenance of its business operation is beyond its control.
- Employer having 10 employees or more must have a Work Rules as required by the LPA. But the Work Rules is no longer required to be filed with the Department of Welfare and Labour Protection.

Computer Crimes Act (No. 2) B.E. 2560 (A.D. 2017) 1

- Effective from 24th May 2017.
- Amending the Computer Crimes Act B.E. 2550 (A.D. 2007).
- Ministry of Digital Economy and Society ("MDES") is in charge of enforcement.
- More and higher penalties.
- More powers to official authorities.
- Most penalties with a fine can be settled with the Settlement Committee appointed by MDES.
- MDES appoints one or several Computer Data Screening Committees, each having 9 members (3 from the private sector).

Computer Crimes Act (No. 2) B.E. 2560 (A.D. 2017) 2

No.	Crimes/Offences	Imprisonment	and / or a Fine (THB)
1	Hacking computer system of another person (Section 5)	Not exceeding 6 months	Not exceeding 60,000
2	Disclosing password / security measures of another person in a manner which may cause damage (Section 6)	Not exceeding 1 year	Not exceeding 20,000
3	Accessing secured computer data of another person (Section 7)	Not exceeding 2 years	Not exceeding 40,000
4	Intercepting computer data in transit of another person (Section 8)	Not exceeding 3 years	Not exceeding 60,000
5	Causing loss or damage to or modifying computer data of another person without authorization (Section 9)	Not exceeding 5 years	Not exceeding 100,000
6	Interfering with computer system of another person to cause disruption, delay, obstacle or nuisance (Section 10)	Not exceeding 5 years	Not exceeding 100,000
7	Sending computer data or email without disclosing source to cause nuisance to computer system of another person (Section 11, first paragraph)	-	Not exceeding 100,000
8	Sending computer data or email to cause nuisance to another person without an easy "opt out" or "unsubscribe" option (Section 11, second paragraph)	-	Not exceeding 200,000
9	Offence under 1, 2, 3, 4, 7 or 8 against computer data or computer system related national security, public safety, national economic stability, or public infrastructure (Section 12, first paragraph)	1 year to 7 years	and 20,000 to 140,000
10	Offence under 9 causing damage to such computer data or computer system (Section 12, second paragraph)	1 year to 10 years	and 20,000 to 200,000

Computer Crimes Act (No. 2) B.E. 2560 (A.D. 2017) 3

No.	Crimes/Offences	Imprisonment	and / or a Fine (THB)
11	Offence under 5 or 6 against computer data or computer system related to 9 (Section 12, third paragraph)	3 years to 15 years	and 300,000
12	Offence under 5 or 6 causing injury to another person or damage to property of another person (Section 12/1)	Not exceeding 10 years	and not exceeding 200,000
13	Uploading into computer system:- (1) computer data which is distorted, forged or false which may cause damage to the public; (2) computer data which is false which may cause damage to national security, public safety, notional economic stability or public infrastructure or cause panic to the public; (3) computer data related to national security or terrorism; (4) computer data which is obscene accessible by the public; (5) distributing or sharing computer data under (1) to (4) (Section 14, first paragraph)	Not exceeding 5 years	Not exceeding 100,000
14	Offence under 13 against a person (Section 14, second paragraph)	Not exceeding 3 years	Not exceeding 60,000
15	Service provider cooperates with, consents to or knowingly allows offence under 13 in computer system under his control (Section 15)	Not exceeding 5 years	Not exceeding 100,000
16	Uploading for public access picture of a person which is created, edited or modified in a manner which may cause disreputation, hatred or shame to that person (Section 16)	Not exceeding 3 years	and not exceeding 200,000
17	Not retaining computer traffic data for not less than 90 days from the date of its entry into computer system or for a longer period as ordered by the official; not retaining identity data of service user from commencement of service usage up to 90 days from the end of service usage (Section 26)	-	Not exceeding 500,000

DBD e-Registration

- Rule of the Central Partnerships and Companies Registration Office of DBD on Registration of Partnerships and Companies through Electronic Registration System B.E. 2560 (A.D. 2017).
- Effective from 1st May 2017.
- e-Registration is for company name reservation, company registration, amendments of company registration particulars (directors, objectives, registered address, etc.), registration of dissolution and liquidation of company, withdrawal and disposal of company from the Companies Register.
- Service user must obtain a Username and a Password from DBD at www.dbd.go.th for use as a Digital Signature.
- Obtaining and using of a Username and Password can be made by a person or his attorney.

DBD e-Filing of Financial Statements

- DBD Rules and Procedures for Filing of Financial Statements B.E. 2559 (A.D. 2016).
- Effective from 22nd September 2016.
- Person in charge of accounting preparation of Thai companies and foreign companies operating in Thailand must file audited financial statements through the DBD e-Filing.
- Filing audited financial statements through the DBD e-Filing must use the Username and the Password issued to user by DBD.
- e-Filing applies to filing of audited financial statements for 2015 accounting year and all later years.

Liabilities of Directors No More Presumed

- Act on Amendments to Laws Related to Criminal Liabilities of Representatives of Legal Entities B.E. 2560 (A.D. 2017).
- Effective from 12th February 2017.
- Directors, managers or persons responsible for company business operation are no longer presumed liable with the company under 76 laws (Revenue Code; Act on Offenses of Registered Partnerships, Limited Liability Partnerships, Limited Companies, Associations and Foundations B.E. 2499; Immigration Act B.E. 2522; Consumer Protection Act B.E. 2522; Factories Act B.E. 2535; Electronic Transactions Act B.E. 2544; etc.).
- Directors, managers or persons responsible for company business operation are liable with the company only if the offense of the company is committed per their instruction, act or omission.
- Non-executive director not involved with day-to-day operation of the company is liable with the company only if he is involved.
- The public prosecutor must prove in a criminal case that the director committed the offence. The burden of proof is no longer with the director.

More Investment Promotion Activities Available

- BOI Notification No. Sor. 1/2016 re: Amendment of List of Promoted Activities under the BOI Notification No. 2/2014 re: Policies and Criteria for Investment Promotion.
- Effective from 6th June 2016.
- BOI now grants investment promotion to:-
  - development of high value-added software: develop and provide analysis and data management software services, information security and cyber security software, industrial software, etc.
  - digital services: software platform, digital management service, digital architecture design service, etc.
  - innovation incubation centers
  - creative product design and development centers
- Activity-based incentives.
- Merit-based incentives.

More Service Businesses Available under FBA

- MOC Ministerial Regulation re: Service Businesses Not Required to Obtain Approval for Foreign Business Operation (No. 3) B.E. 2560 (A.D. 2017) (the "**FBA**").
- Effective from 9th June 2017.
- 11 service businesses are no longer subject to an FBL:-

(1) securities business (14 types)

(2) financial institution businesses (14 types)

(3) derivatives businesses (3 types)

(4) trustee for transactions in capital market

(5) life insurance

(6) non-life insurance

(7) asset management

(8) representative offices (5 activities)

(9) regional offices (10 activities)

(10) services to government sector

(11) services to state enterprise entities

Business Collateral Act B.E. 2558 (A.D. 2015)

- Effective from 1st July 2016.
- Business as a whole, machinery, inventory, raw materials, immovable property of real property company, intellectual property, etc. can be used as a collateral for loan.
- Business collateral agreement must be made in writing and registered with the Business Collateral Registration Office, the Department of Business Development.
- Collateral receiver must be a financial institution, special purpose vehicle for securitization, trustee in the capital market, securities company, mutual fund, representative of debenture holders, futures trading company, asset management company, factoring company.
- Collateral receiver is a secured creditor with preferential rights over the collateral.
- Collateral provider can retain possession of the collateral and use, exchange, sell, distribute and transfer it unless agreed otherwise with the collateral receiver.
- Licensed collateral enforcer must be appointed to enforce the collateral if the collateral is a business as a whole.

Trademark Act (No. 3) B.E. 2559 (A.D. 2016)

- Effective on and from 28th July 2016.
- Sound marks are allowed registration.
- Multiple-class applications are allowed. Single-class applications remain possible.
- Same or similar trademarks of same owner are no longer required to be registered in association.
- The time period for responding to a TMO's order is reduced from 90 days to 60 days from the date of receipt of the relevant order from the TMO.
- The time period for paying the official registration fees has been extended from 30 days to 60 days from the date of receipt of the registration order from the TMO.
- A trademark registration can be renewed within 3 months prior to its expiry date or during the grace period of 6 months from its expiry date with a surcharge of 20% of the official renewal fee.
- The official fees have been increased, in most cases, to two times of the 1991 rates.
- Unauthorized refilling of a genuine package bearing a registered trademark constitutes an offence.

Copyright Acts (No. 2 and No. 3) B.E. 2558 (A.D. 2015) 1

- Effective on and from 4th August 2015.
- The first sale doctrine is recognized. The sale of an original copyright work or its copy by a person who has legally acquired it is not a copyright infringement.
- Temporary reproduction of copyright work in computer system to allow a computer system to function is not a copyright infringement.
- Preliminary injunctive relief against copyright infringement on a computer system and an ISP data system is possible.
- Deletion or modification of Right Management Information (RMI) of a copyright work from its label or packaging knowingly that such act could persuade, cause, facilitate or conceal infringement of a copyright or performer's right is RMI infringement.

Copyright Acts (No. 2 and No. 3) B.E. 2558 (A.D. 2015) 2

- Circumvention or provision of service that causes circumvention of Technological Protection Measures (TPM) used to protect a copyright work or performer's right work knowingly that such act could persuade or cause infringement against such work is TPM infringement.
- The moral rights of performers are now recognized and protected.
- Punitive damages are now possible if there is clear evidence showing that infringement of a copyright or performer's right has been committed deliberately or intentionally to cause a copyright work to be widely accessible to the public.
- The Court can order infringing articles to be confiscated or destroyed, with the infringer bearing the confiscation or destruction cost.
- Unauthorized camcording in cinema for commercial or personal use is a criminal offence.

Thailand 20 Years IP Roadmap to Innovation-Driven Economy

2016
Enhancing efficiency of registration and protection of IP

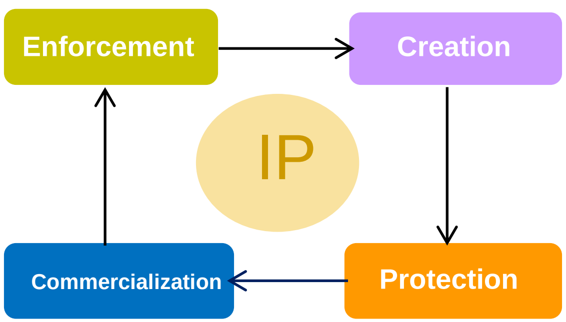
Phase 1: 2017 – 2021
Improve Thailand's IP system to be more efficient to facilitate IP owners by reducing the procedure and shortening the timeframe for getting registration of IP

Phase 2: 2022 – 2026
Use innovation and IP assets as main tools for creating added value to goods and services and increase economic competitiveness of the country

Phase 3: 2027 - 2031
Thailand's IP goes beyond boundary to international market. IPRs of Thai entrepreneurs and Thai exporters are protected in the importing countries. Thai economy is driven by innovation and IP.

Phase 4: 2032 – 2036
Thai people can create, innovate, own, and commercialize IPRs with their full potential so that Thailand can be considered as "high-income country" and "developed country" with stability, prosperity and sustainability.
Thailand is the source of production of creative goods, IP-based industries and high technologies.

Thailand is a stable, prosperous, and sustainable developed country



Source: The Department of Intellectual Property

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