

NO&T Thailand Legal Update

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I. Space Affairs Bill – An Endeavor to Go Where No Law Has Gone Before**Overview**

As the trend of the world's space industry has shifted from military to scientific and commercial objectives, Thailand is also one of the countries that strives to seek new opportunities in space. The development of the space industry in Thailand can be first seen in Thailand's use of satellites for telecommunication and exploration for natural resources. Various agencies have been established and are responsible for satellite-related affairs. For instance, in 2000, the Geo-Informatics and Space Technology Development Agency ("GISTDA") was established as a public organization to unify Thailand's development of satellite-related technology, which the Ministry of Science and Technology was previously responsible for. Subsequently, in 2009, the National Space Policy Committee ("NSPC") was established by the Cabinet to oversee and formulate national policy and strategy on space affairs (including the consideration of budgets) as well as to promote and provide support for the application of space technology.

In terms of legal infrastructure to regulate space activities, since 1967, Thailand has been a party to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "**Outer Space Treaty**"). In addition to the declaration of peaceful exploration and use of space for the benefit of all mankind, Article VI of the Outer Space Treaty also mandates each member state to authorize and supervise activities in outer space by government or non-government agencies. Section 60 of the Constitution of Thailand of 2017 also explicitly stipulates that the satellite orbit is national asset and shall be utilize for the benefit of the country, and hence, the access to satellite orbit requires the permission from the National Broadcasting and Telecommunication Commission. However, despite Thailand's membership in the Outer Space Treaty and utilization of satellites as mentioned, Thailand has not yet enacted a master law to govern space affairs and activities. The recent developments in respect of a draft of the Space Affairs Bill (the "**Space Bill**") can be seen as an effort by Thailand to unify its laws on space and bring space activities into the realm of regulation and also to provide supports to such downstream industries.

Summary of the Draft of the Space Bill

In 2017, the NSPC approved a draft of the National Space Master Plan 2020-2037 to construct a national space policy framework and approved a draft of the Space Bill. Thereafter, the draft of the Space Bill underwent several revisions and approvals by the NSPC and another related agencies. The latest update to the draft of the Space Bill was approved in a meeting of the NSPC on 2 October 2020. According to the report on this meeting, the latest revision to the draft of the Space Bill places emphasis on legal infrastructure and the "New Space Economy" and also affirms Thailand's commitment to the Outer Space Treaty and other space treaties that Thailand is or will become a member of in the future.

The tentative content of the draft of the Space Bill can be summarized as follows:

- The National Space Agency (“NSA”) will be established as the main authority to regulate and provide support for space affairs and the development of space activities, including the promotion of investment in the space industry. The NSA will be authorized to grant licenses to carry out space activities, which will be regulated under the Space Bill;
- To carry out space activities in Thailand, in foreign territories or in space, (i) a Thai national person/entity or (ii) any entity that is registered in Thailand must obtain a license from the General-Director of the NSA. In this regard, the scope of “space activities” regulated under the Space Bill shall include exploration, experimentation or other activities in space, including launching or attempting to launch space objects, humans or other living creatures into space orbit, as well as other supporting activities, such as the provision of spaceports. Space tourism and space mining are also included in the scope of space activities in the latest draft of the Space Bill;
- The criteria for granting a license to carry out space activities will be further stipulated through sub-regulations issued under the Space Bill. Various factors shall be considered when stipulating such criteria, such as the differences in each space activity, economic feasibility, national security, etc. A license holder will also be required to obtain insurance in designated amounts to cover any damage caused by such activities;
- The NSA will promote “space-related activities” i.e. downstream industries from space activities and provide financial, academic, technological or other support, which will be announced by the NSA. Under the Space Bill, space-related activities will include activities in various fields, such as designing or manufacturing of satellites, spacecraft and space stations or any research related to space technology or geo-informatics, manufacturing of devices related to satellites, telemedicine, etc. Entrepreneurs of space related-activities can apply with the NSA for benefits for space-related activities under criteria that will be further announced; and
- If the Thai government is required to provide compensation for any damage caused by space activities or space objects as stipulated by the Space Bill, the Government shall be able to provide recourse for such compensation to the party who caused the damage.

Endnote

Although the draft of the Space Bill is still in its initial state, it can be seen as a signal for entrepreneurs to be prepared for the new frontiers of the space industry. According to the data presented by the GISTDA, as of October 2020, there are approximately 35,600 entrepreneurs in the space industry, including downstream enterprises in Thailand; most of which are small and medium sized enterprises. For Thailand, the prospective income from the space industry could reach 56.122 billion THB (approximately 1.798 billion USD)¹. This data presents an opportunity for Thailand in the space industry and presents an opportunity for space-related manufacturing industry ranging from parts for spacecraft to food for astronauts. On the other hand, this data also presents a need for Thailand to create a legal structure and a need for support from the relevant authorities in this industry.

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¹ <https://www.prachachat.net/economy/news-531083>

II. Summary of Laws Concerning Electronic Technology Used in Day-to-Day Operations

Background

COVID-19 has accelerated the progress of the digital transformation of business all over the world. Currently, due to the work-from-home trend, many Thai companies have adapted their day-to-day business operations by utilizing electronic means, including virtual meetings, electronic documentation and e-signatures. This article contains a brief legal summary of various e-technology utilized in Thailand's workplaces, which can be used in your office's day-to-day operations:

1. Electronic documentation

At present, legal documents can be stored in digital format as it is less costly and also minimizes the risk of loss. In the past, it was disputed whether a digital document is legally valid because most documents were executed by hand and stored in paper form only.

The main law governing electronic transactions in Thailand is the Electronics Transactions Act of 2001 ("**ETA**"), as amended. The ETA endorses the legal recognition of electronic records providing that information contained therein shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record. However, some printout documents are still physically required to be stored in the office to avoid non-compliance with legal requirements e.g. tax and accounting documents.

As for e-documentation, where it is legally required for the information to be in written form, an electronic record satisfies such requirement if the information contained therein is "accessible" (i.e. readable and interpretable) so as to be usable for subsequent reference.

As a result, it is confirmed that preparing documents in electronic format can satisfy the legal requirement. In addition, not only e-documentation, the ETA also certifies that various transaction related activities can be performed electronically e.g. signing, affixing company seals, affixing stamp duty, provision of originals, retention of documents, etc., provided that certain security measures are met.

2. Electronic signature

In addition to e-documentation, currently, electronic signatures ("**e-signature**") are slowly gaining popularity in commercial transactions in Thailand in both the public and private sectors. The criteria for e-signature presumed validity under Section 9 and Section 26 of the ETA provide that an e-signature will be legally recognized and deemed reliable if it meets the following requirements:

- 2.1 The signature method is a method by which the signatory can be identified and represents the signatory's intentions regarding the information contained in the electronic data; and
- 2.2 The signature method is
 - (a) reliable and appropriate for the purpose for which the data message was generated or sent or
 - (b) other methods capable of verifying the signatory and representing the signatory's intentions regarding the information contained in the electronic data as well as other supporting evidence in case it cannot meet such requirement.

The e-signature is deemed reliable if it fulfills all of the following conditions:

- (a) The data is linked directly to the signatory, and to no other person.
- (b) At the time of signing, the data is under the exclusive control of the signatory.
- (c) Post-signing modifications are detectable.
- (d) If the signatory attests to the completeness and the integrity of the information, any alteration made to the e-signature is detectable from the time of signing.

3. Electronic meeting

The Emergency Decree on Electronic Meetings of 2020 ("**Emergency Decree**") was published in the government gazette on 19 April 2020 during COVID-19's peak in Thailand. The Emergency Decree allows any meeting required by laws, including shareholders and board of directors meetings, to be held via electronic means and the attendees are no longer required to be physically present.

Prior to the enforcement of this Emergency Decree, meetings held via electronic means were governed by the Announcement of the National Council for Peace and Order No. 74/2557 on Teleconferences through Electronic Means dated 27 June 2014, which required all attendees to be physically present in Thailand and at least one-third of the quorum to physically attend the meeting from the same venue. Such burdensome requirement has since been

removed.

The key principles of the Emergency Decree are as follows:

- (a) Notice of the meeting can be sent to the directors or shareholders via email.
- (b) The attendees are not required to attend physically but may attend the meeting from anywhere in the world.
- (c) The attendees must verify their identities before the e-meeting starts, and be able to vote during the meeting.
- (d) The company must make an audio or audio-visual recording of the entire e-meeting and must keep the recording of the meeting.
- (e) After the meeting, minutes of the meeting must be prepared in writing.
- (f) The e-meeting must be held in accordance with the security standards for e-meetings prescribed by the Ministry of Digital Economy and Society (“**MDES**”).

The current security standards for e-meetings set out by the MDES became effective from 27 May 2020. The notification prescribes the mandatory standards and procedures to be complied with by the e-meeting organizer and all attendees. The key standards include the following processes:

- (a) The attendees must verify their identities before the meeting starts. This can be done by the traditional approach or using technology such as SMS one-time passwords or having each participant obtain an individual username and password to attend the meeting.
- (b) The attendees must be facilitated with sufficient and clear audio throughout the meeting and must also be able to interact during the meeting.
- (c) The attendees must be able to access documents related to the meeting. Documents related to the meeting must be sent to the attendees prior to the meeting or must be presented during the meeting.
- (d) The attendees must be able to vote during the e-meeting by both general vote and secret vote. It is acceptable to adopt technology for secret vote, such as an online questionnaire.
- (e) The organizer of the meeting must make a record of the meeting, including written minutes, audio recording, and attendees’ electronic traffic data (i.e. IP address, date and time of login and logout).

In order to comply with these security standards, a company should ensure that the organizer chooses an appropriate system that fulfils all the requirements. For this purpose, a company may consider using a system that has passed verification under the ETA, either by (i) self-evaluation (to date, several systems including Microsoft Teams which has completed the self-evaluation) or (ii) certification by MDES.

4. Electronic stamp duty

As a general practice of stamp duty affixation, the stamp duty is usually affixed manually until the Act on Amendment to the Revenue Code No. 48 become enforced on 21 March 2019. Under this Act, Section 3 Sedecim of the Revenue Code has been added to allow the submission of records or documents relating to taxation to be done by electronic means including the payment of stamp duty.

Therefore, in order to facilitate the payment of stamp duty via electronic channels, the Revenue department of Thailand has issued the subordinate regulation namely the Notification relating to stamp duty payment No. 60 Re: prescribing the Methods for Payment of Stamp Duty in Cash pursuant to the Application for Payment of Stamp Duty in Cash for E-Instruments (form Or.Sor. 9) via Internet Systems for some Instruments (“**Notification**”). According to the Notification, the stamp duty for the following instruments electronically executed from 29 September 2020 to 31 December 2020 can be paid online via the Revenue Department’s website or Application Programming Interface.

- (a) Hire of work contracts
- (b) Loan of money or agreement for bank overdraft
- (c) Powers of attorney
- (d) Proxies for voting at a meeting of a company
- (e) Guarantee

The taxpayer can pay the stamp duty within 15 days before or after the date of execution of the documents. Upon completion, the Revenue Department officer will issue a code confirming payment together with a receipt and will sign the document by e-signature. As a result, it will be deemed that the stamp duty for such document has been duly affixed as required by laws.

Others

Thailand has also permitted additional uses of electronic systems to facilitate public sector services. For example, the Administrative Court has introduced the e-admin court system for filing lawsuits online. Moreover, the Department of

Business Development, the Board of Investment, and the Industrial Estate Authority started implementing their online system for the public to submit applications online.

Although the entire registration process cannot be completed online, we expect that in the near future, this may change and there could be a one-stop, paperless online service.

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III. Another Attempt to Introduce the Single Shareholder Company in Thailand

Background

The concept of a single shareholder company (the “**Company**”), i.e. the corporate model where a private limited company is allowed to have only one shareholder, has been discussed in Thailand for a long time. In September 2020, a bill regarding the Company (the “**Bill**”) was reopened for public hearing for the fourth time by the Department of Business Development, Ministry of Commence, and the bill was recently approved by the Council of the State.

As a general rule, the Civil and Commercial Code of Thailand prescribes that there must be a minimum of three (3) shareholders in a private limited company. On the other hand, the Bill, if enacted, will reduce such requirement to one (1) shareholder. This will allow one (1) person to own and operate the Company in response to the modern business and investment trends.

Key features

Most importantly, the Bill maintains the concept of limited liability which the sole shareholder of the Company can still enjoy. Although, the legal concepts and mechanisms of the Company and a private limited company are similar in many aspects, the Bill contains some key features of the Company such as:

- The shareholder of the Company must be an individual (not a corporate entity);
- One (1) individual can own only one (1) Company, except as otherwise provided by the ministerial regulation;
- The name of the Company must contain the wording “**...Co., Ltd. (Single Shareholder)**” to clearly denote the type of this entity to the public;
- The Company can be fully managed by the single shareholder himself/herself, or by one (1) or more managers, in whole or in part, appointed by the shareholder; and
- The Company can be transformed to a private limited company by following certain specific requirements.

Next steps

There have been multiple attempts to propose the Bill in 2015, 2017 and 2018. None of them, however, were successfully approved by the Thai Cabinet. In the consideration process of the Bill this time, the next step of the Bill will be the cabinet approval. The timeline for the consideration of the Bill cannot be predicted at present and it is subject to further modification. We will keep you updated on any progress.

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