July, 2020 No. 3

This issue covers the following topics:

Gaming Business in Thailand: Business Opportunity and Legal Concerns

Background

This article provides a brief overview for business entrepreneurs who are considering entering into the gaming industry in Thailand. The first part of the article will discuss industry overview and business opportunities in Thailand, then, it will discuss legal principles and unique regulations pertaining to games by focusing on gameplay mechanics, distribution, and transmission of game contents for operators/distributors of mobile games or online/offline games (excluding arcade games) in Thailand.

I. Overview of Gaming Industry and Business Opportunity in Thailand

Similar to the trend around the world, the gaming and e-sport industry in Thailand is booming. According to the survey conducted by Thailand E-Sport Federation, 41% of the Thai population plays games of some sort, e.g. mobile, PC, or console. In 2019, the value of the gaming industry in Thailand reached 22 billion THB (approximately 710 million USD) which is a 13% increase from the previous year, and ranked No. 2 in terms of growth in the industry among ASEAN countries[1]. Emergence of many international e-sport tournaments, recognition of e-sports as a category of sport by the Sport Authority of Thailand, the release of Thai-subtitled versions of major game titles, such a *Cyberpunk 2077* and *The Last of Us Part II,* and opening of gaming industry and e-sport-related curriculum in many Thai universities can be seen as the response of the industry to the expanding player base in the country.

In terms of a business venture, Thailand is relatively open and willing to grant support to entrepreneurs in the gaming industry; generally, without obstacle, due to insufficient infrastructure or explicit interference from the state. Examples of possible business ventures related to the gaming industry are as follows:

- Game developer/game studio, either an original content creator or subcontracting
- Gaming hardware manufacturing
- Game publishers and localization
- Game distributors (either by physical or digital copies)
- Game marketing agents or aftermarket service provider

1 https://www.salika.co/2019/10/29/thailand-gaming-market-rising-2019/

Foreigner business operators can conduct all of above-mentioned activities either by (i) operating domestically through a subsidiary or branch office, or (ii) operating offshore but outsourcing certain supporting activities, such as marketing, to Thai companies. However, it is prudent for foreign business entrepreneurs to consider each option carefully by taking into account investment-related laws, e.g., investment incentives, foreign business restriction, tax, intellectual property, and exchange control, etc., together with other commercial factors.

It is also noteworthy that game developers (game studios) and gaming hardware manufacturers may be eligible to receive investment incentives under both the Board of Investment (BOI), and/or the Easter Economic Corridor (EEC), which will grant numerous tax and non-tax incentives to such business.

II. Legal Principle and Unique Regulations Pertaining to the Gaming Industry in Thailand

Although investment in the gaming industry in Thailand can be done through various forms of business, and basically free of obstacles, as discussed above, Thailand has some unique legal principles that players in the industry should be aware of.

1. Gambling Act of 1935 (the "Gambling Act")

The Gambling Act is often cited as the primary law governing gaming in Thailand due to the nature of the said Act that regulates "game playing" as well as regulating lotteries in general. In this regard, the definition of "gambling" is not defined within the Gambling Act, and, in principle, games which are subject to the regulation under the Gambling Act must be games or acts of betting listed as "Type A Gambling" or "Type B Gambling" in the annexes of the Gambling Act.

Gaming software and provision of gaming services on any platform are not listed as either Type A or Type B Gambling, thus, gaming software and provision of gaming services are not subject to any license under the Gambling Act. There is also a Supreme Court judgment which opined that arcade machines, which are solely used for entertainment purposes, and with respect to which the players do not make any bet by using the score of the game, shall not be considered as gambling machines under the Gambling Act[2].

Although gaming software and related services in general are not subject to any license requirements due to the reasons mentioned above, the Gambling Act is now returning into the subject of the discussion due to the introduction of loot box or *gacha* (collectively referred to hereinafter as "**Loot Box**") in mobile games and online games. Loot Box is a system where players receive in-game items by lottery, and, in many cases, the players must pay a coupon fee in order to get a better chance of receiving superior items or characters than those provided free of charge. This manner of gameplay may share similar nature to a "lottery", which requires a license to operate under Section 9 the Gambling Act.

Considering that the intention of the Gambling Act is to regulate the use of gambling for commercial promotion and to prevent the players from potentially gambling away all of their money, Loot Box can be put into question from the regulator's standpoint because it induces consumers to invest money for an unforeseeable prize, i.e., in-game items. However, from a legal standpoint, the application of the Gambling Act to Loot Box is still questionable as the characteristic of "lottery", as regulated under Section 9, must be "any game of chance promising money or other benefits to any of the players", whereas, virtual items in games cannot be financially appraised like ordinary property. Moreover, considering the fact that the Gambling Act was enacted in 1935, with the latest amendment in 1962, it is unlikely that the provision of the Gambling Act is intended to regulate Loot Box.

Due to this lack of updated regulation less attention paid on this issue by relevant authorities, the legality of Loot Box under the Thai legal system still remains unclear and gives an opportunity for many game providers/publishers to provide Loot Box games in Thailand with less of a legal burden.

2 Supreme Court Judgement No.525-536/2540 (1997))

2. Film and Video Act of 2008 (the "FVA")

Game software to be imported and sold in Thailand is subject to the inspection of its contents by the Film and Video Censorship Committee (the "**Censorship Committee"**) under Section 47 of the FVA[3]. Under the said Act, video games can be classified as one type of "video", meaning "a material which contains recording of visual images or visual images and sounds which can be continuously shown as moving pictures in the form of games …", and, thus, is subject to the inspection thereof.

The Censorship Committee will inspect gaming software and ban any content which is against public order and good moral of the citizen, or any content which scrutinizes public security and/or the dignity of Thai nation. If no such forbidden content is found, the Committee shall grant the permission to sell the game software in Thailand[4]. Moreover, business entrepreneurs who engage in the business of selling game software are subject to obtaining a license to sell gaming software under Section 54 of the FVA.

However, it must be noted that the regulation under the FVA, as mentioned above, will be limited to software which is recorded in physical mediums, e.g., disc or cartridge. This is because the definition of "video" in Section 4 of the FVA is limited to "material with recording of visual images". Although there is no official ruling from the relevant authority, based on this definition, it is understandable that gaming software which is provided through a cloud server, e.g., streaming service or mobiles game, and games purchased in digital copy will not be subject to censorship inspection under the FVA. Nevertheless, transmission of gaming software with depiction of graphic obscenity or sensitive content could be subject to penalty under Computer Crime Act of 2007 (which will be discussed below) and may pose a threat of legal scrutiny to the software distributor, which could lead to the decision by the distributor to pull the content from both physical and online platforms.

3. Computer Crime Act of 2007 (the "CCA")

Under Section 14 of the CCA, a person who uploads illegal data via computer network, e.g., uploading obscenity, deceptive information, information related to national security and terrorism offences under the Penal Code, etc., may be subject to imprisonment not exceeding five (5) years, or a fine not exceeding 100,000 THB (approximately 3,200 USD) or both. Not only the person who uploaded the illegal information, under Section 15 of the Company Act, any service provider who provides the communication channel via online, or storing such information on its server is also subject to the same if it *cooperates, consents, or supports* the import of illegal data onto the network unless it can prove that it has immediately deleted the illegal data under Section 14, thereby complying with the guideline for warning and take down measures as announced by the Ministry of Digital Economy and Society (MDES)[5].

In the recent years, many online games provide a social network function, such as multi-player mode or chatroom for players during the gameplay. Although the liability caused by uploading any illegal information or data should principally belong to the transmitters of such message, i.e., the players, game service providers should be aware that, as the provider of a communication medium, it may face the risk of penalty under Section 15 the CCA, if it neglects to take down any illegal data from the game.

III. Conclusion

Despite the growth of the gaming industry in Thailand, laws and regulation regarding the gaming industry are somewhat delayed to catchup with the latest trend, i.e., the laws give more emphasis to censorship of content with less focus on new mechanisms and new distribution methods in gaming, such as Loot Box and online games. The recent debate in Thailand regarding the regulation of e-sport, e.g., banning of first-person shooter (FPS) competition

3 **Section 47 of the FVA.** A Video which will be exhibited, rented, exchanged or distributed in the Kingdom shall be reviewed and approved by the Film and Video Censorship Committee. The application and approval shall be in accordance with the rules, procedures and conditions prescribed by the Committee and published in the Government Gazette.

4 Censorship Committee Notification re: Criteria for Inspection of Video and Advertising Media dated 26 August 2009, and the amendment thereof.

5 MDES Notification re: Criteria, length and procedures to terminate the distribution of data or delete data by the competent officer and the Service Provider dated 21 July 2017

in school and age restriction of e-sport athletes[6], could be seen as the government's initiation to regulate gaming in a more modern context. Nevertheless, the development of legal infrastructure to straighten out the rules pertaining to the gaming business in Thailand still requires more deliberation and departure from regulations regarding game contents into industry-oriented regulations.

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6 *Dashing the gamer dream -Potential legislation may prevent access and opportunity* (https://www.bangkokpost.com/business/1950348)

Expected Amendments to Corporate Law (Part II)

Background

On 23 June 2020, the Cabinet adopted a resolution approving a bill of amendment to the Civil and Commercial Code (the "**CCC**") governing partnerships and limited companies (the "**Bill**"). This amendment is in addition to the bill of amendment to the CCC for private limited companies previously approved on 9 June 2020 - two (2) weeks earlier (see Part I of the amendment *here*).

The key amendments are as follows:

1. Decrease of the minimum number of promoters and shareholders required for a limited company from three (3) to two (2) persons

Currently, a private limited company must be initiated by having at least three (3) individuals (so-called "promoters") enter into a memorandum of association and thereafter proceed with the formalities required by laws (Section 1097 of the CCC). The Bill proposes reducing the minimum number of promoters from three (3) to two (2) persons.

As a consequence of the above, the Bill also proposes reducing the minimum number of shareholders in a private limited company from three (3) to two (2) persons. It is noteworthy that, technically, the CCC does not explicitly stipulate the minimum number of shareholders in a private limited company. Instead, the CCC stipulates that, if the number of shareholders in a private limited company is less than three (3), a court may dissolve such company (Section 1237 (4) of the CCC), which implies that such company must maintain at least three (3) shareholders at all times to avoid a court-ordered dissolution.

2. Clarification of the minimum number of attendees at a shareholder meeting

Presently, the CCC simply stipulates that shareholders holding one-fourth (1/4) of the capital of a company must be in attendance at a shareholder meeting for a quorum to be present. The Bill proposes adding further clarification that two (2) or more shareholders must be in attendance at a shareholder meeting, either in person or by proxy, for a quorum to be present.

A commonly understood legal principle stipulates that a minimum of two (2) shareholders must attend a shareholder meeting for the purpose of joint consultation. This was confirmed by several official sources, including Opinion of the Office of the Council of State (Krisdika) No. 9/2508 (1965) and Supreme Court Decision No. 3074/2560 (2017). Therefore, the proposed wording in the Bill re-confirms this legal principle.

3. Official recognition of mergers by the CCC and measures to protect minority shareholders in M&A cases

The CCC currently recognizes the principle of amalgamation whereby two (2) or more companies amalgamate or combine to form one (1) new company, which will assume all rights and liabilities of its constituent companies (Sections 1241 and 1243 of the CCC).

The Bill will officially introduce into the CCC mergers whereby one (1) company will cease to exist and merge with another company. More details will also be officially introduced into the CCC in respect of the statutory formalities (e.g., an option whereby a minority shareholder can exit a merger or an acquisition plan with the fair value of such shareholder's shares, a list of agenda items to be considered at joint meetings between companies to be merged/amalgamated, etc.).

In addition to the key amendments above, the Bill also contains some provisions that reiterate the amendment of the CCC in accordance with Order of the Head of the National Council for Peace and Order No. 21/2560 on Amendments of Laws to Facilitate the Ease of Doing Business dated 4 April 2017 (e.g., (i) the option to stipulate a clause for dispute settlement between directors and shareholders in the articles of association (Section 1108 (1) of the CCC), (ii) the obligation of a company and its directors to distribute a dividend within one (1) month after the

date of approval thereof (Section 1201, paragraph 4 of the CCC), etc.). Also, the penalties concerning the proposed amendments above were simultaneously approved by the Cabinet (the so-called "Act prescribing Offences Related to Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations of 1956"); therefore, this ensures that, if the above amendments become effective, there will also be criminal penalties imposed on those companies and their directors who fail to comply.

Next steps

The Bill will now be proposed to the National Assembly for consideration and will come into force after it is submitted to the King for his signature and published in the Government Gazette. Although the exact timeline cannot be predicted at this moment and the details of the amendments are subject to further modification, we will keep you updated on this matter.

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Value Added Tax to Be Imposed on Overseas Providers of e-Services and Overseas Digital Platform Operators

Background

On 9 June 2020, the Cabinet of Thailand approved a bill amending the Revenue Code to impose a value added tax (the "**VAT**") on overseas providers providing services through digital platforms ("**e-Services**") into Thailand (the "**Bill**"). This amendment is intended to apply to e-Services such as e-commerce, marketing and advertisements, games and applications, movies and digital content, airlines and hotel agents, cloud computing, investments and gambling.

The key details of the Bill are summarized below:

1. An overseas provider providing services through electronic means to its non-VAT registered service recipients (so-called business to customer transactions (B2C)) in Thailand will be subject to the registration and imposition of the VAT if the annual income received from such e-Services in Thailand is over 1.8 million THB. Examples of these kinds of overseas providers are Netflix, Spotify and Facebook.
2. A foreign digital platform operator with an annual income of over 1.8 million THB will be subject to the registration and imposition of the VAT if an overseas provider provides services through such foreign digital platform to customers in Thailand. In such case, the annual service fees collected from customers in Thailand by such overseas provider shall be the basis for the VAT imposed on the foreign digital platform operator. Examples of these kinds of foreign digital platform operators are Google Cloud Platform, Microsoft Azure and Amazon Web Services.
3. Online recognition and acceptance of filings and submission of applications and any documents relevant thereto will be possible.

The imposition of the VAT under the Bill is anticipated to enhance the efficiency of taxation in Thailand and increase the fairness between overseas and domestic providers of e-Services. Please note that the principle intent of the Bill is to collect the VAT from the aforementioned overseas providers and is not to reform the whole taxation system for electronic or digital related businesses. An additional point of interest will be how the government plans to enforce this new law on those overseas providers of e-Services as the Ministry of Finance expects to collect an additional 3 billion THB in taxes per year from the enactment of this Bill.

The Bill will be proposed to the National Assembly for further consideration and will come into force after it is affixed with the King's signature and published in the Government Gazette. Currently, the precise timeline still cannot be predicted and the details of the Bill are subject to further modification; however, we will keep you updated on this matter.

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