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I. Legal system of Thailand

Nuttaros Tangprasitti, Radklao Namkunya Yasunari Sugiyama, Nobuhiko Harada, Takuya Wada

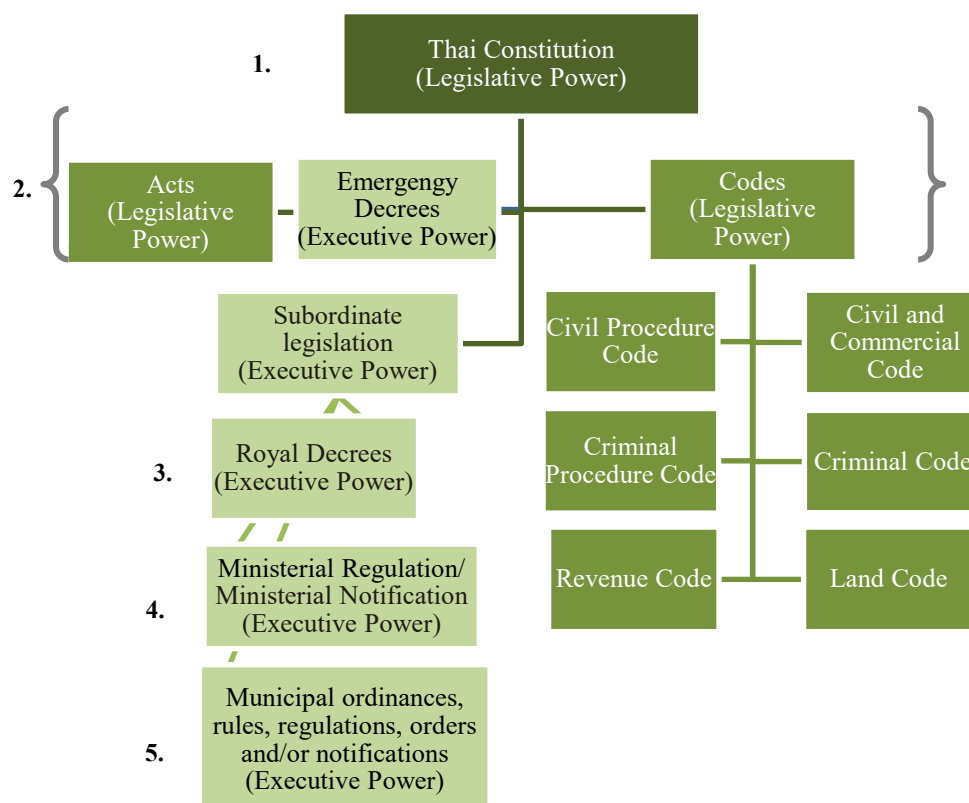
The legal system of Thailand is a civil law legal system, where the enforceable provisions are mostly based on written law passed by the legislature, i.e. parliament, branch of government through legislative power and the executive branch through executive power. Thailand has applied civil law, judicial decisions are not regarded as the law and are thus not binding. However, in practice, the court may adhere to the precedents of previous Supreme Court cases for subsequent cases which contain same or similar situations and/or circumstance. However, judicial precedents in Thailand are not binding. Courts are not bound to follow their own decision. Lower courts are not bound to follow precedents set by higher courts. However, Thai law has been influenced by common law precedent. Courts are therefore significantly influenced by earlier decisions or decisions of higher courts.

In terms of the hierarchy of laws in Thailand, the Constitution of the Kingdom of Thailand is the most important and principal law amongst other laws and regulations which shall prevail over other laws passed by parliament. The sources of laws in the second tier shall be Acts, Codes and Emergency Decrees which shall be regarded as the law of Thailand. In this connection, an Act is the most common form of Thai law; it shall stipulate various types of specific law to be enforced in Thailand. For an Emergency Decree, it is enacted during an emergency or dangerous situation in order to protect the country by the executive branch; it shall be enforceable and equivalent to law enacted by legislative power.

Apart from the enactment of an Emergency Decree, the executive branch of government is also able to issue subordinate legislation, i.e. Royal Decrees, Ministerial Notification, rules, regulations, orders and/or notifications, which shall be considered as the lower rank of regulation in Thailand.

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To illustrate the hierarchy of the law in Thailand clearly, please find following flowchart:



Remark: The Ministerial Notification may be enforceable in the same level as the Ministerial Regulation or below (as the case maybe) depending on the extent of the law in higher rank, i.e. the law in the same tier as Act or above, which authorizes the Ministry to issue the subordinate of legislation for the execution of such law. In this regard, if the Act clearly authorizes the Ministry to issue the its Ministerial Regulation and/or Ministerial Notification under such Act for certain matters, both Ministerial Regulation and Ministerial Notification for each specific matter shall be enforceable in the same rank by the virtue of such Act. On the other hand, if the Act authorizes the Ministry to issue only the Ministerial Regulation, the Ministerial Regulation may grant the authorization to Ministry in order to issue the Ministerial Notification for specific matters. In this case, the Ministerial Notification shall be enforceable by the virtue of the Ministerial Regulation.

According to the flowchart above, a law of a higher rank shall prevail over a law of a lower rank, for instance, the Constitution of Thailand, as the supreme law of Thailand, shall prevail over any other laws; whilst Acts, Emergency Decrees and Codes shall prevail over any subordinate legislations, respectively. The enactment of the laws and regulations in Thailand shall be enforced only by the virtue of the law in a higher rank, and the provision prescribed in a law of lower rank shall not be contrary to a law of higher rank.

II. Overview of financial laws in Thailand

Nuttaros Tangprasitti, Radklao Namkunya Yasunari Sugiyama, Nobuhiko Harada, Takuya Wada

The Civil and Commercial Code shall be applied to any financial or commercial transactions in Thailand as the basic principle, for instance, the principle for right and obligation amongst the parties in the specific contract. However, if there is any specific law which is particularly stipulated in respect of such financial or commercial arrangement, such arrangement shall be subject to such specific law instead. In this connection, the specific law is predominantly enacted in terms of an Act which shall authorise and delegate the power to a certain governmental authority in order to regulate and monitor such specific matters by issuing sub-regulations, e.g. notifications, regulations and/or orders.

There are two types of major financial market in Thailand, which will govern and supervise compliance to the law, i.e. the money market and the capital market. In the money market, most of the regulations are enforced by the Bank of Thailand (the “BOT”) for the activities with regard to short-term loans, and banking finance. On the other hand, the capital market is mostly supervised by the Office of Stock Exchange Committee of Thailand (the “SEC”) for activities relating to funding, e.g. public offering of securities, mutual fund, hedge fund, crowd funding and derivatives, etc., for long-terms financing purposes, which includes both the equity market, and debt market.

In this newsletter, we will describe relevant laws and regulations in respect of the financial market and investment in Thailand to which a foreign investor should attend to and/or be aware of prior to proceeding with any financial or commercial transactions in Thailand.

Regulations relating to money market and banking finance in Thailand

In terms of regulations relevant to the money market and banking finance in Thailand, a foreign investor must adhere to the Exchange Control Act B.E. 2485 (1942) and other sub-regulations issued by the BOT for further correct compliance when they wish to remit any money or working capital into Thailand and also repatriate profit from Thailand back to their parent country. In Thailand, the BOT’s requirements for outward remittance are more complex than for the inward remittance, for instance, the purpose of the transaction must be clearly clarified to the relevant commercial bank and such foreigner must provide the evidence thereof for the officer’s perusal. Besides, in order to avoid any illegal source of capital of the investor for investment in Thailand, the relevant Thai government agency, i.e. the Anti-Money Laundering Office (“AMLO”), has enacted the Anti-Money Laundering Act B.E. 2542 (1999) and further amendments from time to time in order to monitor any suspicious transactions occurring in Thailand. If there is any transaction that meets the criteria prescribed by the AMLO, e.g. the threshold of cash to be used in each transaction and also the size of transaction for further inspection; the AMLO shall request other authorities, such as, commercial bank and the Land Office for further cooperation on the preparation of the transaction report to the AMLO accordingly. Consequently, foreign investors shall be able to declare the source of their capital to the relevant official and shall retain evidence hereof in order to avoid any money laundering accusation.

For the foreign investor who would like to engage in the financial business in Thailand e.g. commercial banking business, finance business, credit foncier business, securities business, futures contract business under the law on futures contracts, life insurance business under the law on life insurance or other businesses prescribed in the notification of the BOT, the financial business operator must obtain the relevant and necessary licence and/or approval from the relevant authority or authorities e.g. the BOT, prior to commencement of business.

Besides, BOT also supervises the operation of payment systems and payment services because such matters are essential in order to support the liquidity of business working capital which shall be subject to the Payment System Act, B.E. 2560 (2017). Any person who desires to operate a payment system or payment service in Thailand in order to facilitate online marketplace as well as an internet banking system that qualifies as the designated payment system or the designated payment service prescribed by the Notification of the Ministry of Finance, such person shall obtain a relevant licence from the Minister of Finance or register with the BOT, which certain type of business regarding payment system and the foreigner is restricted to operate payment service as described above.

In relation to granting security over assets for financial support in Thailand, Thai laws provide various kinds of security and collateral for a debtor in order to expand the capacity of working capital in the business. Apart from the pledge and mortgage as the basic security prescribed in the Civil and Commercial Code, the Business Collateral Act B.E. 2558 (2015) (“BCA”) allows a person to grant security over different kinds of assets, e.g. immovable property, machinery, intellectual property, inventory and raw materials, as collateral without delivering said assets into the possession of the creditor.

Regulations relating to capital market in Thailand

As mentioned earlier, the SEC is the major authority in the monitoring and supervision of various activities in the capital market, and is under the control of the Ministry of Finance. The Securities and Exchange Act, B.E. 2535 (1992) was enacted to monitor the funding by means of public offering of the various kinds of securities, including shares, bonds, debentures, investment units and any other instruments as specified by the SEC. Any person who desires to engage in a securities business, e.g. securities brokerage, securities dealing, investment advisory service, securities underwriting, mutual fund management and private fund management, must qualify under said Act, as well as the SEC’s relevant regulation/notification on such specific matters. Other activities relating to a derivatives contract shall be subject to the Derivatives Act B.E. 2546 (2003), under which the Thailand Futures Exchange (TFEX) is the central trade on futures, options, and options on futures of the specified underlying asset, e.g. foreign currencies, gold and , interest rate.

Apart from stock exchange market and TFEX, funding through a trust scheme is also acceptable in Thailand but only to the extent of a governed transaction in the capital market, e.g. The Real Estate Investment Trust (“REIT”) and Sukuk under Islamic principle, both of which shall be subject to provisions of the Trust for Transactions in Capital Market Act B.E. 2550 (2007). Said Act shall regulate and recognise an investment through a trust scheme in Thailand. As mentioned above, the REIT is one of the mechanisms of the Collective Investment Scheme in Thailand which has replaced the previous Property Fund according to The Notification of the Capital Market Supervisory Board. In this matter, we will discuss comprehensive details on the Thai REIT in our separate newsletter, which will include the REIT’s structure, conditions of underlying assets as well as its tax benefits according to Thai law.

Last but not least for the capital market, the SEC also monitors investment in crypto currency and/or digital tokens in Thailand under the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018) and other relevant SEC relevant regulations. In this connection, it is acceptable for a foreigner to be an investor who trades/exchanges digital assets through a Thai digital asset business operators platform. For the exchange of digital assets, only Thai Baht is acceptable due to the BOT’s regulations. However, prior to proceeding

with the investment, the foreign investor should check the list of Thai digital asset business operators who have obtained the relevant licence from the SEC, as provided on the SEC's website. Besides, SEC's website also provides a list of digital asset business operators who have not registered with the SEC for the investor's information.

In our upcoming newsletter, we will elaborate on further details regarding basic security interest under Thai law, e.g. kinds of assets which Thai law allows to be granted as security or collateral, so that investors are able to thoroughly explore the most appropriate option to their businesses in order to boost the liquidity of working capital in Thailand.



[Nuttaros Tangprasitti](#)

Partner, SCL Nishimura
nuttaros@siamcitylaw.com



[Radklao Namkunya](#)

Attorney-at-Law, SCL Nishimura
radklao@siamcitylaw.com



[Yasunari Sugiyama](#)

Partner, Nishimura & Asahi
y_sugiyama@jurists.co.jp



[Nobuhiko Harada](#)

Partner, Nishimura & Asahi
n_harada@jurists.co.jp



[Takuya Wada](#)

Attorney-at-Law, Nishimura & Asahi
t_wada@jurists.co.jp