



Legal News

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Eastern Economic Corridor Act B.E. 2561

On 14 May 2018, the Eastern Economic Corridor (EEC) Act B.E. 2561 (the “**Act**”) was published in the Government Gazette with the aim to promote commerce and high technology industries which are modern, innovative and environmental friendly towards achieving sustainable development. The details of this Act can be summarized as follows:

- The EEC currently spans across three provinces i.e., Chachoengsao, Chon Buri and Rayong and other surrounding eastern provinces to later be included in the EEC will be issued in by way of a Royal Decree.
- The EEC has to set up an EEC Committee (chaired by the Prime Minister) which has the responsibilities to set a plan to develop the EEC, approving layout for land plot utilization, making investment conditions for the private sector and defining the EEC special economic zones, targeted industries and granted incentives and benefits.

- There are 10 targeted industries for the EEC which includes, next-generation automotive, intelligent electronics, tourism for high-income tourists and medical tourism, advanced agriculture and biotechnology, food processing, advanced robotics industry, logistics and aviation, biofuels and biochemical, digital and holistic medical and health services.
- The Secretary General has the power to grant approval, issue licenses or give consent, or accept registration or notices on matters in relation to laws on land excavation and land filing, building control, machinery registration, public health, immigration particularly in granting approval for the specialized foreigners or specialist to stay in the Kingdom, civil registration, factory and land allocation for the purpose of managing business or process in the EEC.
- EEC investors that are juristic persons and foreigners have the right to own land to operate the approved business activities in the EEC area, without seeking approval under the Land Code. In addition they have the right to own condominiums to operate the approved business activities or to live with an exemption from the restrictions under the Condominium law and the right to lease land in the EEC area for up to 50 years to develop and promote the targeted industries, whereby this lease can be renewed for 49 years after the initial 50 year period.
- The Policy Committee may designate any area under the EEC to be a promoted special economic zone or the owner of land located in the EEA area can request the Office of the EEC Policy Committee ("**EEC Office**") to appoint such land to be a promoted special economic zone in the EEC provided that the owner must comply with the requirements, methods, conditions as set out by the EEC Office with the approval of the EEC Policy Committee.
- Business operators are eligible to receive an exemption or reduction of corporate income tax not exceeding the right as specified in the Investment Promotion Act or the National Competitive Enhancement Act for targeted industries. Furthermore, the right to be exempted from the Exchange Control Act, and to use foreign currency for payment of goods and service between business operations in the EEC area.

This Act became effective as of 15 May 2018 onwards.

The Royal Decree on the Digital Asset Businesses B.E. 2561

On 13 May 2018, the Royal Decree of the Digital Asset Businesses B.E. 2561 ("**Royal Decree**") was published in the Government Gazette and came into force on 14 May 2018. The Royal Decree regulates and controls activities and businesses relating to the digital assets for the purposes of maintaining economic stability of Thailand and protecting investors and other persons involved. The details of the Royal Decree are summarized as follows:

- The Royal Decree empowers the Office of the Securities and Exchange Commission as per the Securities and Exchange laws ("**SEC Office**") to control the sale and purchase of digital assets. The digital assets shall mean cryptocurrencies and digital tokens.
- Generally, the same number and type of cryptocurrencies or digital tokens can be delivered, transferred, held or returned.
- Calculation of the digital assets into Thai Baht shall be subject to the rules set by the Securities and Exchange Commission ("**SEC**").
- Issuance of the digital tokens i.e., the offering of newly-issued digital tokens to the public by the offeror must be approved by the SEC Office, whereby the offeror must be a legal entity established in a form of either a limited company or public limited company and must submit a registration statement and a draft prospectus to the SEC Office.

- Investors who are able to invest in digital tokens must be of the types and conditions specified by the SEC.
- Once the SEC Office approves the registration statement, the offeror shall be entitled to offer the digital tokens through the portal approved by the SEC only.
- Violation or failure to receive a permission or does not offer the digital tokens through the approved portal shall be liable to imprisonment of no more than 2 years or a fine of no more than 2 times of the total price of the digital tokens offered, the fine of which must not be less than 500,000 Baht, or both.

Currently, the SEC is in the process of drafting notifications and other relevant legislations for clarity and practically in managing transactions of digital assets under the Royal Decree.

BOI Application for Investment Promotion in Research and Development and Engineering Designs under the Notification No. 9/2560

On 8 January 2018, the office of the Board of Investment (“**BOI**”) announced clarification in applying for investment promotion in research and development and engineering designs according to BOI notification No. 9/2560 Measures to Promote Improvement of Production Efficiency. The details are summarized as follows: -

Requesting for Investment Promotion

- This measure applies to existing BOI or non-BOI promoted projects; and
- The activity must be eligible for investment promotion by the BOI at the time of the application, except for the activity(ies) listed in the Announcement of the BOI No. Por. 4/2560.

Terms and Conditions for Investment Promotion

- The following terms and conditions must be complied with:
 - The scope of services must include investment on research and development and engineering designs for efficiency improvement;
 - The investment value and expense shall be considered comparable to the revenue received from the project activity requesting for investment promotion only;
 - Investment and expenses used in the research and development project shall comprise of salary of employees who work in the research and development project, cost for sourcing of equipment/device to be used in the research and development project, expense for hiring workers to work in the research and development project in Thailand, fees for registering of Intellectual Property Rights protection in Thailand and overseas, etc.;
 - The value of the income to be used for exemption of corporate income tax must be calculated from the total amount of net profit for each accounting year and must not exceed 50% of the investment. The income to be calculated must occur after obtaining the investment promotion certificate;
 - The investment capital to be calculated for exemption of corporate income tax will be as follows:
 - In case of commencement of project within 3 years from the issuance of the BOI Promotion Certificate, the investment must be calculated from the date of applying for investment promotion to the commencement date of project operation.

- In case of commencement of project after 3 years from the issuance of the BOI Promotion Certificate, the investment must be calculated from the date of applying for investment promotion until the end of 3-year period from issuance of the BOI Promotion Certificate.

The application for investment promotion under this measure must be submitted with the application for investment promotion within 30 December 2020 and the project must be ready for commencement within 3 years after the date of issuance of the promotion certificate by the BOI.

Ministry of Commerce clarifies on arranging for the board of directors' meeting of the public company limited under the Public Companies Limited Act B.E. 2535

The Department of Business Development with the Ministry of Commerce has announced clarifications on arranging for the board of directors' meeting of a public company limited under the Public Companies Limited Act, B.E. 2535 dated 17 May 2018. Based on the legal opinion of the Office of the Council of State No. 839/2561 as follows: -

- In the case where the chairman of the board ("**chairman**") is vacant (e.g. exists but is unable to perform the duty or declines to perform the duty, etc.) the remaining directors whom constitute a quorum can arrange for the board of directors' meeting in order to perform the necessary management matters of the company.
- In the case where there are vacancies of directors less than the total number of directors to constitute a quorum, such remaining directors regardless of the existence of a chairman can act as the board of director in order to hold a meeting of shareholders for election of directors to replace all the vacancies at the soonest possible time.
- The company may stipulate the special provisions for calling the board of directors' meeting in the Articles of Association of the company in order to continue the operation of the company without interruption in the case where the chairman is vacant (e.g. exists but is unable to perform the duty or declines to perform the duty, etc.)

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