



## Legal News Deloitte Legal – Representing tomorrow

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### Ministerial Regulation on Permission for Tourism Business dated 18 May 2018

On 18 May 2018, the Minister of Tourism and Sports has issued a Ministerial Regulation on Permission for Tourism Business B.E. 2561 (A.D. 2018) ("Ministerial Regulation") by virtue, which is the law regulating tourism business prescribing specific conditions as well as duties for tourism business operators, guides, and tour leaders, and imposing penalties for violation or non-compliance with the Tourism Business and Guide Act B.E. 2551 (A.D. 2008) ("Act"). The Ministerial Regulation can be summarized as follows:

- License for tourism business ("license") can be categorized into 4 types:
  - 1) License for a particular province-tourism
  - 2) License for domestic tourism
  - 3) License to guide overseas tourists to travel domestically
  - 4) License for general tourism, where by an authorized applicant holding a general tourism license is deemed as a license holder for every type of tourism businesses.
- An applicant is required to apply for an insurance policy covering accident(s) which may occur during the trip for tourists, guides, and tour leaders. The sum insured and term of policy must comply with the provision in the Ministerial Regulation.

- An applicant who wishes to provide an underwater-diving service with underwater breathing apparatus and other diving equipment must submit other additional documents and evidence, such as, a copy of certificate of registration of Thai vessels and certificate of inspection of vessels, a copy of certificate of standard diving equipment.
- Application for extension of license must be submitted within 30 days prior to the expiration date. Once the application is submitted, the tourism business operator may continue to operate its business until informed of a disapproval of license extension.

This Ministerial Regulation came into effect as from 22 June 2018. Any request submitted prior to the enforcement of this Ministerial Regulation which is still under consideration by the registrar is also deemed to be submitted in compliance with this Ministerial Regulation.

## **BOI's Measures to increase capabilities of operators in SMEs sector per the BOI's Announcement No. 2/2561**

On 31 January 2018, the Office of the Board of Investment ("Office of the BOI") has issued an announcement of the Board of Investment to increase capabilities and strengthen SMEs (enterprises with fixed assets or investment amount (excluding land and working capital) of not more than 200 million Baht). The Announcement set requirements and conditions as follows:

- Business activities in type A and B1 to the attachment to the BOI's announcement No. 2/2557 dated 3 December 2014 are promoted activities under this measure with additional specific requirements and conditions for activities of development of plant and animal species (those that do not fall under the business activities of biotechnology) and hotel management.
- Conditions in applying for promotion under this measures are as follows:
  - Must have a minimum investment capital for each project of at least 500,000 Baht (excluding cost of land and working capital)
  - There must be a natural person with Thai nationality holding shares of at least 51% of registered capital.
  - Debt to Equity Ratio must not be more than 3:1.
  - Usage of used machine in Thailand in the project must not be more than 10 million Baht calculated from the value in the fixed asset register and must have investment in new machinery in the proportion of not less than 50% of total amount of machinery used in the project.
  - The applicant must have net asset and investment excluding cost of land and working capital, combined between promoted and non-promoted projects, of not more than 200 million Baht.
- Rights and Benefits
  - Exemption to importation of machinery
  - Exemption on CIT for activities in type A in a proportion of 200 percent of the total investment (excluding cost of land and working Capital)
  - Other rights and benefits according to the announcement of the BOI no. 2/2557 dated 3 December 2014
- Additional Rights and Benefits to increase capabilities
  - Rights and benefits under Merit-based Incentives
  - Rights and benefits for investment in other regions
- In a case of filing an application for rights and benefits under Merit-based Incentives
  - There must be additional investments in Research and development, Financial Assistance to Technological and Personnel Development Fund, Educational Institution, Specialized Training Centre, Research Institution and Government Department on Science and Technology, etc.

- Will be granted additional corporate income tax (“CIT”) exemption of 1-3 years according to the conditions of the Office of the BOI, but in total, shall not exceed 13 years.
- Business activities in type A are eligible to apply for additional rights and benefits according to the value of the project along with an application for promotion or after such promotion has been granted. In case of filing an application after such promotion has been granted, on the day of filing an application for additional rights and benefits, the project must still remain CIT exemption period as well as capped amount on CIT exemption according to Section 31. While in the business activities type B1, the applicant must apply for Merit-based Incentives together with application for investment promotion.
- Additional rights and benefits for investment in other regions
  - If the businesses are located in 20 provinces designated by the Office of the BOI, such businesses will receive additional 3 years of CIT exemption. Nonetheless, if such Business Activities are in type A1 or A2, such business will receive 50% CIT reduction for an additional 5 years from the date of expiry of CIT exemption period.

These measures shall apply to applications for investment promotion submitted to BOI from 1 January 2018 to 30 December 2019.

## Notifications of the SEC on business of digital assets

On 3 July 2018, the Securities and Exchange Commission (“SEC”) has enacted notifications relating to the business of digital assets (“Notifications”), with the effect as from 16 July 2018, details can be summarized as follows:

- The following entities are subject to the criteria, conditions, and methods as issued in all Notifications:
  - a digital token issuer desiring to conduct Initial Coin Offering (“ICO”), or to offer a digital token that has been issued by an issuer for the purpose of public offering, provided that types of digital token being offered are limited to either investment token, or utility token (“a digital token issuer”);
  - a business operator of digital assets is an authorized business operator of digital assets consisting of cryptocurrency or digital token trading center, cryptocurrency or digital token broker, and cryptocurrency and digital token trader; and
  - ICO portal service provider.
- An applicant for digital token offering must file its application with the Office of the Securities and Exchange Commission (“Office of the SEC”). Digital token offering must be implemented through an ICO portal service provider who has been approved by the SEC committee and has considered and approved of digital token offering. Such implementation must be done within 6 months from the date of being informed of approval from the Office of the SEC.
- An authorized applicant is obligated to file the registration statement and draft prospectus with the Office of the SEC, and to report its digital-token-offering result to the Office of the SEC within 15 days from the closing date of the offer.
- Any person who desires to take charge of ICO portal must file an application with the Office of the SEC.
- An ICO portal service provider must exercise due diligence in order to investigate and verify the qualities of a digital tokens issuer as required by the Office of the SEC. An ICO portal service provider is also required to collect and evaluate information of an investor, disclose any

information as required by regulations, and arrange and submit a digital-token-offering transaction report.

- In case that an ICO portal service provider receives cryptocurrency from an investor or a digital token issuer for a transaction, or an authorized applicant receives cryptocurrency as a remuneration, only cryptocurrency authorized in the list of the Office of the SEC deriving from trade, exchange, or depositing with an authorized business operator of digital assets is permitted.

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