"Do You Know" Series

Administrative and Tax Requirements of Contracts under Thai Law

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In this collection, the Asian Business Law Institute ("ABLI") briefly discusses the administrative and tax requirements, if any, applicable to a contract in select civil, common and hybrid jurisdictions. Earlier collections under the same series have examined indemnity and liquidated damages clauses, contractual breach and remedy, and interpretation of contracts in those same jurisdictions.

The short article below provides a brief overview of selected requirements under Thai law.

Administrative matters

Thailand's Accounting Act 2000 requires corporate entities conducting business in Thailand, including foreign entities and joint ventures, to retain books of accounts and other relevant documents at their offices for at least five years. Individuals who opt for certain taxation methods must also retain supporting documents for tax audit purpose. Further, the Revenue Code requires corporate entities and individuals that are registered for value-added tax ("VAT") to prepare and retain VAT-related documents at their place of business for at least five years. This retention period may be extended to seven years for entities engaging in particular businesses, subject to relevant procedures.

Transactions in certain highly regulated industries, such as commercial banking, securities, insurance, telecommunications, etc., are subject to government approval. A merger transaction that may result in monopoly or market dominance also requires prior approval from the competition authority. Regulatory approvals, if any, needed by transactions are generally not based on transaction value. However, transaction value is one of the criteria used to determine whether transactions of acquisition and disposition of assets are subject to approval from shareholders and/or regulators under rules applicable to listed companies.

Under Thai law, certain types of commercial contracts, such as those for sale of property, transfer of property, mortgage, and lease of property for more than three years, must be registered with government authorities. Failure to do so will result in such contracts being void and unenforceable among contracting parties. Parties to a contract can agree to split fees and taxes incurred for such registration. However, if registration fees or taxes are not paid or are underpaid, government authorities will go after the party who is responsible under the law regardless of the contractual agreements between the parties.

Taxes

Generally, in Thailand, sale of goods and provision of services are subject to VAT which is currently at 7% and ultimately borne by consumers of the goods or services. Certain types of businesses that provide services whose "value added" is difficult to define are exempted from VAT and instead subject to a specific business tax ("SBT") at rates varying from 0.1% to 3% presently. Failure to comply with VAT and SBT regulations will result in penalties and surcharges under the law, but will not affect the validity of relevant contracts or the admissibility of such contracts as evidence in court.

Withholding tax applies to various categories of income paid to individuals and legal entities. Generally, income derived from the sale of goods is not subject to withholding tax, while income from the provision of services is mostly subject to withholding tax. If a payor fails to remit withholding tax to the relevant authority, it will be jointly responsible with the recipient of income for the shortfall and must pay a monthly surcharge. However, such failure would not affect the validity of the relevant contract or its ability to be used as evidence in court. Withholding tax is a tax credit to be offset against the final income tax payable at the end of the year. Any excess withholding tax can be refunded by cash but not be carried over to subsequent years.

Stamp duty applies to 28 types of instruments listed in the Stamp Duty Schedule annexed to the Revenue Code. Partnership contracts, contracts on property rental and share transfer contracts are some examples of the instruments listed. Business purchase agreements, novation agreements, licensing agreements and franchising agreements are some examples of instruments not subject to stamp duty because they are not specifically included in the Schedule. The Schedule also determines the parties responsible for stamp duty. Failure to pay stamp duty will result in a financial penalty. While such failure does not affect the validity of a contract, any contract that is not duly affixed with stamp duty cannot be admitted as evidence in a civil case, until payment has been duly made.

Commercial contracts are not subject to excise duties in Thailand. Excise duties are levied on select goods—mainly luxury items—such as beer, cosmetic products, crystal glasses, liquor, perfume, petroleum products, soft drinks and tobacco.

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The expert is contributor to ABLI's latest project that aims at harmonising contractual clauses in Asia, covering 12 key contracting jurisdictions that include Australia, China, England, India, Indonesia, Japan, Malaysia, New York State, the Philippines, Singapore, Thailand and Vietnam.