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Myanmar

Directive for Recall and Ban of Hazardous Goods and Services

ミャンマーでは 2019 年に新たな消費者保護法が、2022 年 1 月にその下位規則である消費者保護規則が制定されるなど消費者保護法制の整備が進められてきた。この一連の流れで、2022 年 12 月にミャンマー消費者庁は、危険な物品・サービスのリコールに関するガイドラインを定めた。本稿ではこのリコールに関するガイドラインについて概説する。

Introduction

On 20 December 2022, the Department of Consumer Affairs ("**DOCA**") issued Directive No.3/2022 ("**Directive**") which sets out guidelines for recall and ban on the sale and distribution of dangerous goods and services including stepwise procedures to be followed by business owners in the recall of dangerous goods and services. In 2019, the Consumer Protection Law ("**CPL**") was passed by the Pyidaungsu Hluttaw which repealed the previous Consumer Protection Law 2014 and on 18 January 2022, the Consumer Protection Rules ("**CPR**") were issued by the Ministry of Commerce. The Directive is issued under the provisions of the CPL, which requires DOCA to issue procedures for the recall of goods or services and prohibit the distribution of dangerous goods. Further details of CPL and CPR can be found in our previous Newsletter articles here and here.

Key Provisions of the Directive

1. Goods or services that must be recalled

The Directive provides that goods or services must be recalled if they can cause damage. This includes goods or services that (a) have potentially hazardous design flaws that were not clear at the time of manufacture but that may arise during the use of the goods, (b) have defects from the manufacturing process or during transportation or storage before distribution to the market, (c) have faults and defects that prevent use, or (d) possess hazardous criteria or do not comply with the relevant safety standards.

2. Recall and ban of hazardous goods and services by the DOCA

Ban of dangerous goods and services in addition to recall are classified into two classes, temporary and permanent, according to the decision of DOCA based on the level of health hazard involved (risk to the customer). Temporary bans will be imposed when the defect is unlikely to cause serious harm to users. Permanent bans will be imposed when the defect is life-threatening. The business owner will be required to recall the goods and services within the period specified by the DOCA with the supervision of the inspection officer under Rule 58 of the CPR.

3. Voluntary recall

If a business owner finds that their goods or services have a problem or defect, they must initiate a voluntary recall to resolve the issue by submitting voluntary recall submission to DOCA. Voluntary recall submission must include basic information about the goods and services such as the brand name, type of the product, description of the potential danger and damages, the possibility of danger being notified to the consumer, the recall strategy, method of recall from the market, plan for consumer grievances, and the method of communication with distributors. The relevant DOCA office will then decide a certain period for the business owner to voluntarily recall their goods or services and will assign an inspection officer to supervise the recall process.

4. Removing the goods from the market and notification to supply chain partners

The business owner must cease sales of and quarantine all defective goods and services immediately, if goods or services recall is necessary. Business owners must then disclose such defect information to other businesses in the supply chain, such as importers, exporters, retailers, wholesalers, producers, installment sellers, distributors, installers, service providers, and so on.

5. Notification to consumers

The business owner, manufacturer, or importer responsible is required to notify the consumers through all possible mass communication such as media, television, radio, newspapers, journals, or publication for three consecutive days and disseminate the recall information. Such notification must include a basic description and information about the products to be recalled, reason, place, time, methods of recall, recall period of the goods or services, and necessary adjustments for damages resulting from the recall of the goods or services.

6. Notification to DOCA after recall process

Business owner is required to notify the inspection officer assigned by DOCA when the recall process (DOCA-ordered recall or voluntary recall) of their goods or services is completed. Such notification must include the proof of a complete recall of the goods and services, records related to the recall, records of issuing notice to the customers and the supply chain partners. The inspection officer will then inspect all records to ensure compliance with the recall process.

7. Follow up action of recalled goods and services

Business owners must compensate the consumers and supply chain partners who were affected by the recall of the products. With respect to goods which are capable of being repaired, after they have been repaired and are ready to be sold or redistributed to the market, business owners must submit a comprehensive report and supporting evidence to the relevant DOCA office confirming that the irreparable products were properly destroyed, the consumers and other businesses involved in the supply chain were compensated and goods capable of being repaired have been appropriately repaired. If the goods that are recalled, temporarily or permanently banned, are being sold without making the report to DOCA, legal action may be taken against the business owner.

8. DOCA announcement on hazardous goods and services

Notably, DOCA will announce all recalls and DOCA's actions on temporarily or permanently banning goods or services on the website of DOCA or the ASEAN Consumer Protection Committee or the official news network of DOCA.

Conclusion

Business owners facing product issues and considering recall of their goods or services must ensure the recall is carried out in a procedure in the Directive to avoid any penalties or disciplinary action by the DOCA.

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Thailand

Thailand Board of Investment's New Strategy for Investment Promotion from 2023

タイ投資奨励委員会（BOI）は 2023 年から 2027 年の 5 年間に適用される新たな投資促進戦略を公表し、関連する新投資奨励策の適用が 2023 年 1 月 3 日からスタートしている。新投資奨励策においては、奨励対象業種の分類変更（7 分類から 10 分類への変更）、新たな恩典カテゴリー（A1＋）の追加等が行われており、それらの概要を解説する。

1. Background

At the end of last year, the Board of Investment of Thailand ("**BOI**") had approved the new five (5)-year investment promotion strategy from 2023 to 2027 ("**New Strategy**") under which the BOI aims **to promote investment to restructure Thailand's economy to new economy** under three (3) concepts which are: innovation, competitiveness and inclusiveness. To achieve this aim, the BOI sets out seven (7) pillars of investment promotion, including, upgrading of existing industries in parallel with building new industries, transitioning to green and smart industries, promoting Thailand as business center and an international trade and investment gateway for the region, etc.

In furtherance of the New Strategy, the BOI has revised the list of categories of promoted business activities and also issued seventeen (17) BOI Notifications, which will apply to applications for investment promotion submitted from 3 January 2023 onwards. In this relation, this article will provide the summary of the key measures under the New Strategy.

2. Summary of key revisions and measures in response to the New Strategy

2. 1 The revisions of promoted business categories

The BOI has introduced the list of categories of promoted business activities. The new list of categories of promoted business activities ("**New List**") is described in the new BOI Notification No. 9/2565 Re: Investment Promotion Measure for Industries which are Important for Country Development dated 8 December 2022 and also in the Investment Promotion Guide as of 2023 ("**BOI Guide**"). The promoted business activities will be re-categorized into ten (10) categories i.e. (1) agriculture, food and biotechnology industry, (2) medical industry, (3) machine and vehicle industry, (4) electric appliances and electronics industry, (5) metal and materials industry, (6) chemical and petrochemical industry, (7) utilities, (8) digital industry, (9) creative industry and (10) high-value service.

There is no substantial change to the promoted business activities and incentives in the New List. Most remain the same. However, business operators are advised to check the New List for updated information relating to their investment promotion application.

2. 2 The key measures under the New Strategy

There are nine (9) measures which are proposed by the BOI to drive the New Strategy[1]. The key measures are as follows:

(1) New scheme of incentives under the New Strategy

The BOI enacted the BOI Notification No. 8/2565 Re: Policy and Criteria for Investment Promotion dated 8 December 2022 ("**BOI Notification 8/2565**") to replace the former BOI Notification No. 2/2557 dated 3 December 2014 which had been used for eight (8) years ("**BOI Notification 2/2557**").

[1] The nine (9) measures are: (1) Investment Promotion Measures For The Targeted Industries; (2) Competitive Enhancement Measures; (3) Retention & Expansion Program; (4) Relocation Program; (5) Investment Stimulation Measures For Economic Recovery; (6) Smart & Sustainable Industries Upgrade Programs; (7) Investment Promotion Measures for SMEs; (8) Area-based Promotion Measures; and (9) Social and Local Development Investment Programs.

Under the BOI Notification 8/2565, the BOI does not substantially change the fundamental criteria for approving the investment promotion, for instance, the criteria continue to require not less than twenty per cent (20%) of income growth projection, use of new machines, having not less than One Million Baht (THB 1,000,000) of investment capital, etc.

In terms of the incentives based on business activities, under the BOI Notification No. 8/2565, there are still two (2) main groups, i.e. Group A and Group B with the following details:

- **Group A -** which is divided into five (5) sub-groups, namely Group A1+, A1, A2, A3, and A4, which are entitled to the following incentives:

  (i) The Corporate Income Tax ("**CIT**") exemption;

  Under the BOI Notification No. 8/2565, the range of the CIT exemption is from three (3) to thirteen (13) years depending on each sub-group. Please note that Group A1+ (concerning mainly the technology development such as biotech, nanotech, advanced material tech, upstream industry using high level of technology and innovation) is newly added and will be entitled to the CIT exemption from ten (10) to thirteen (13) years, while, formerly, under the BOI Notification 2/2557, the CIT exemption for eight (8) years for Groups A1 and A2 was the maximum;

  (ii) Import duty exemption for machinery;

  (iii) Import duty exemption for raw materials or necessary materials only for manufacturing for export; and

  (iv) Non-tax incentives[2].

- **Group B -** which is entitled to the same incentives under item (ii) to (iv) of Group A above but not including the CIT exemption. Under the BOI Notification 8/2565, Group B does not have any sub-groups.

Under the BOI Guide, each type of business activities will be specified with the entitled incentive either under Group A (each relevant sub-group) or Group B[3].

(2) Additional incentives under the New Strategy

Other than activities-based incentives under the new BOI Notification 8/2565, the BOI issued several other notifications in regard to additional incentives which include:

(a) Merit-based incentives

The BOI crafted out incentives for enhancement of competitiveness in the former BOI Notification 2/2557 and included it in the newly issued BOI Notification No. 10/2565 Re: Measure for Enhancement of Competitiveness dated 8 December 2022 ("**BOI Notification 10/2565**"). Business operators are able to apply for additional incentives under the BOI Notification 10/2565 provided that the project invests in (i) technology and innovation, (ii) human resource development (e.g. high technology training, work-integrated learning (WiL), co-operative education program), or (iii) suppliers' potential development.

The additionally granted incentive is an additional exemption of CIT in the amount of two hundred per cent (200%) of the investment or expenses. Also, such project will be granted additional incentives in relation to CIT exemption for the following additional period if the amount of investment or expense is as in the table below.

[2] The non-tax incentives are for example, the right to own land in case of the foreign majority owned company.
[3] https://www.boi.go.th/upload/content/BOI_A_Guide_Web_Th.pdf

Amount of Investment or Expense	Years of Additional CIT Exemption
≥1% of first 3-year sale amount or ≥THB 200,000,000	1-8
≥2% of first 3-year sale amount or ≥THB 400,000,000	2-8
≥3% of first 3-year sale amount or ≥THB 600,000,000	3-8
≥4% of first 3-year sale amount or ≥THB 800,000,000	4-8
≥5% of first 3-year sale amount or ≥THB 1,000,000,000	5-8

In case the project invests in research and development (R&D) not less than one per cent (1%) of the first three (3) year sale or Two Million Baht (THB 2,000,000), whichever is lower, the amount of CIT exemption will have no limit. In addition, the duration of addition CIT exemption shall not exceed eight (8) years in total except for Group A1+, A1 and A2, for which the exemption shall not exceed thirteen (13) years in total.

(b) Area-based incentives

The BOI also issued the BOI Notification No. 18/2565 (2022) Re: Investment Promotion Measure in Special Economic Corridor Area dated 8 December 2022 ("**BOI Notification 18/2565**") which prescribes the following provinces to be designated as Special Economic Corridor Areas:

- Northern Economic Corridor: NEC-Creative LANNA - Chiang Rai, Chiang Mai, Lamphun and Lampang provinces;
- Northeastern Economic Corridor: NeEC-Bioeconomy - Nakhon Ratchasima, Khon Kaen, Udon Thani and Nong Khai provinces;
- Central-Western Economic Corridor: CWEC - Ayutthaya, Nakhon Pathom, Suphan Buri and Kanchanaburi provinces; and
- Southern Economic Corridor: SEC - Chumphon, Ranong, Surat Thani and Nakhon Si Thammarat provinces.

The BOI Notification 18/2565 attaches the list of targeted industries in the Special Economic Corridor Area which can obtain additional incentives such as business activities in digital industry, agriculture and food industry, etc. If the project carries out human resource development or technology and innovation research and development, the additional incentives, e.g. additional two (2) years of CIT exemption for business activities in Group A1+, will be granted provided that the required conditions are fulfilled.

Furthermore, in addition to the BOI Notification 18/2565, the BOI issued other notifications regarding New Strategy to grant additional incentives in certain areas, for example, medical innovation area, science and technology area, etc. Business operators can apply for these additional incentives for the project carried out in these specific areas.

(c) Agenda-based incentives

The BOI issued the BOI Notification No. 15/2565 Re: Measure for Industry Elevation (Smart and Sustainable Industry) dated 8 December 2022 which specifies measures and incentives which will be granted thereunder, for example, measure for automatic and robot system in manufacturing process or measure for industry 4.0 elevation for business activities under Group B, etc.

3. Conclusion

From 2023, investors in Thailand can benefit from BOI's new scheme of investment promotion under the New Strategy. Thus, business operators applying for investment promotion from 3 January 2023 onwards are advised to check the details of such new investment promotion scheme and avail of the incentives under these newly issued BOI Notifications.

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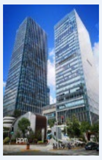

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