

Legal Update

Draft Act on the Offenses Related to Computer B.E. ...

The Cabinet approved in principle on the draft Act on Offenses Related to Computer B.E. 2005, which was duly approved in principle, in the past time, by the former cabinet and also reviewed by the Council of State according to the proposal of the Ministry of Information and Communication Technology. The draft Act is now being forwarded to the Parliament for further consideration and enactment. Follows the significant issues provided in the draft Act:

1. The terms of "Computer System", "Computer Data", "Computer Traffic Data", "Service Provider" and "Service User" shall be defined in order to make more clarity to the law.
2. Charges of Offenses under the draft Act shall include the accessing into computer system or data which has preventive measure for exclusive access and such measure is not available for oneself, wrongful disclosure of the accessing of preventive measure of computer system, wrongful computer data trapping, wrongful damaging, destroying, amending, changing or appending to computer data, disabling of computer system of other person, making data in order to cause other person to believe that the maker is a third party or such data was made by third party, making of false computer data or data related to stability of the Kingdom or data containing pornographic sort and launching such into computer system, and bringing and entering of made up, edited, added or modified photograph of other person into computer system by mean that may cause damage to other person.
3. The competent officer shall be empowered in respect of the ordering to transmission of data or equipment as deemed necessary, making clear of copy of computer data in case there shall be any suspicion against the offense, verifying and assessing into data which is used or may be used as evidence in respect of the offense, decoding of secret code or forwarding to other person to perform on his behalf, in respect of the authority of attaching and seizing of computer system as deemed necessary for realizing of details of the offense and the offender, provided that such attaching and seizing of computer system shall be made in writing by the competent officer as evidence. The authority for ordering of prohibition of distribution, publicity, restraining of use, destroying or amending to computer data shall also be available in the Act.
4. The competent officer shall be prohibited to disclose or transmit to any person of any computer data or data of service user.
5. Any person who detects and discloses any data acquired by the competent officer shall also be subject to punishment.
6. A service provider shall be responsible to keep computer data or service user's data apparent in the applicable contract in accordance with the conditions to be described by the authority.
7. Any computer data, computer traffic data or service user's data which is acquired through the offense under sections 20, 21 or 22 shall be acceptable as unfavorable evidence against the owner or possessor of such data.

(Cabinet Synopsis No. 11-1, November 1, 2005)

Draft Act Prescribing Certain Offenses against Air Navigation (No. ...) B.E. ...

In order to comply with the assembly resolution of ICAO No.A33-4, Thailand as one of the member country of ICAO shall be bound to improve its provisions of the relevant aviation law in order to be in line with ICAO Circular 28-LE/1: Guidance Material on the Legal Aspects of Unruly/Disruptive Passengers, 2001 and the Model Legislation on Certain Offences Committed on Board Civil Aircrafts.

According to the draft Act approved in principle by the Cabinet on November 8, 2005 as proposed by the Ministry of Transport, certain offenses committed on board aircraft under the draft law include seizing or commanding against aircraft during aviation by doing or threatening to do an act of violence against other person or by threatening to harm against aircraft, or performing in any means against aircraft officer in duty, assaulting or sexual harassment against other person, drinking of alcoholic mixed beverage or hypnotic substance which results in inebriate, disordering or disabling in remaining of conscious and may cause danger as to safety of aircraft or on board person, or smoking inside toilet or other place which may cause danger to safety of aircraft.

An aircraft commander shall also be empowered to take any suitable preventive measure against person who is suspected as offender according to Penal Code. Any person, e.g. aircraft commander, officer in duty, passenger, air navigation operator, competent officer who take action in accordance with the provision of the Act shall be relieved from any civil, criminal and regimen liabilities.

(Cabinet Synopsis No. 10-1, November 8, 2005)

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Draft Thai National Craft Act (No. ...) B.E. ...

According to the Draft Act approved in principle by the Cabinet on November 15, 2005 according to the draft law proposed by the Ministry of Transport, all kind of craft registered under the Act shall be considered as Thai national crafts. A craft commander shall be subject to applying for obtaining new certificate of craft registration. A Craft Registrar shall be the official under section 456 of Civil and Commercial code, provided that all registration in respect of sale and purchase of craft shall be made before the Craft Registrar. Any modification of craft body or other part of the registered craft including changing of proportion of Thai nationality of person in charge of any Thai national craft shall be made in compliance with further principle to be described by the Ministerial Regulation.

(Cabinet Synopsis No. 10-1, November 15, 2005)

Draft Act on Protection for Motor Vehicle Casualty (No. ...) B.E. ...

The draft law was approved in principle by the Cabinet on November 15, 2005 as proposed by the Ministry of Commerce and is now under the process for forwarding to the Parliament for further consideration. The significant issues under the draft laws are as follows:

1. There shall be amendment to the definition of "Motor Vehicle" and "Preliminary Compensation" in order to modernize the existing provisions of law.
2. All provisions under the law in respect of "Sign" representing insurance coverage against casualty, including the provision of punishment thereof shall be deleted.
3. The Registrar under the law governing motor vehicle and land transport shall be responsible to verify the availability of insurance under the Act before registration of any motor vehicle and before receipt of annual motor vehicle tax.
4. The Registrar shall also be empowered to request for reimbursement of preliminary compensation or surcharge from the owner of any motor vehicle or from the insurance company.
5. The Office of Casualty Compensation Fund may allocate interest derived from the Fund as for administrative expenses or for other relevant expenses.
6. Applicable legal punishments shall be revised in order to be more suitable for current situation.

(Cabinet Synopsis No. 10-1, November 15, 2005)

Draft Act on Practice against the Committing Aircraft (No. ...) B.E. ...

In order to comply with the transfer of authority in respect of air traffic control from the Department of Civil Aviation to the authority under the control of Aeronautical Radio of Thailand Ltd. (AEROTHAI) and the provision of Annex 2 of Chicago Convention A.D. 1944, the Cabinet therefore approved in principle on November 22, 2005 the draft Act on Practice against the Committing Aircraft (No. ...) B.E. ... as proposed by the Ministry of Transport and forwarded same to the Council of State for further review.

According to the draft Act, the definitions of "Aircraft" and "Aviation Plan" shall be revised and the definitions of "Authority for Air Traffic Service Provision", "Authority for Air Traffic Control" and "Aircraft Commander" shall be inserted in the law. In addition, all aircraft commander shall be responsible to submit in advance of aviation plan for air navigation in the Kingdom of Thailand to the authority for air traffic control with regard to the period of time, regulation, procedure and conditions to be further prescribed by the Ministerial Regulation, except for the aircraft of military and police services. Any change to details of the submitted aviation plan in material as described by the Ministerial Regulation shall be subject to immediately notification to the authority. In case that the aircraft cannot take off by the scheduled aviation plan, the submitted aviation plan shall be treated as cancelled, unless the aircraft commander shall notify for the change of new schedule for taking off.

(Cabinet Synopsis No. 11-1, November 22, 2005)

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☛ Draft Thai Territorial Waters Navigation Act (No. ...) B.E. ...

The draft law was approved in principle by the Cabinet on November 22, 2005 according to the proposal of the Ministry of Transport in order to supplement the existing navigation law in respect of waters navigation traffic and safety in tourism promotion and port areas. According to the draft Act, the Minister of Transport shall be empowered to specify seas boundary line within Thai territorial waters zone as being the restrict area for navigation. The Chief of port officer shall authorities to issue notification specifying borderline of river, canal, lake and seas within Thai territorial waters as being restricted zone for anchoring of craft or raft as well as to set the restricted waters boundary. (*Cabinet Synopsis No. 11-1, November 22, 2005*)

☛ New Listed Countries under IPRs Arrangements

According to the draft notification of the Ministry of Commerce Re: Prescription of List of Contracting Parties to the Convention on Copyrights Protection or the Convention on Protection of Neighboring Rights, follows the lists of new members to Berne Convention and TRIPS:

- **Berne Convention:** Principality of Andorra, Kingdom of Bhutan, Federal Islamic Republic of Comoros, Democratic People's Republic of Korea, Republic of Djibouti, Federate States of Micronesia, The Kingdom of Saudi Arabia, the Syrian Arab Republic, U.A.E., Republic of Uzbekistan and Socialist Republic of Vietnam. Thus, the current members to Berne Convention shall be totally 159 countries.

- **TRIPS:** Republic of Armenia, Kingdom of Cambodia, Republic of Macedonia and Kingdom of Nepal. Thus, the current members to TRIPS shall be totally 148 countries.

(*Cabinet Synopsis No. 11-1, November 29, 2005*)

☛ New Minimum Wage Rate

With effect from 1 January 2006, the new rate of daily minimum wage, as described below, approved by the Cabinet's meeting on December 6, 2005 shall apply:

Applied Province(s)		Rate of Minimum Wage (Baht / Day)
1.	Bangkok Metropolis, Nonthaburi, Nakhon Pathom, Pathumthani, Samut Prakan and Samut Sakhon	184
2.	Phuket	181
3.	Chonburi	166
4.	Saraburi	163
5.	Nakhon Ratchasima	158
6.	Chiang Mai, Phang Nga, Phra Nakhon Si Ayutthaya, Ranong and Rayong	155
7.	Chachoengsao	153
8.	Kanchanaburi, Krabi and Lopburi	151
9.	Chanthaburi, Phetchaburi and Samut Songkhram	150
10.	Trang and Ang Thong	148
11.	Prachuap Khiri Khan, Prachinburi, Ratchaburi, Sakaeo and Singburi	147
12.	Chumphon, Trat, Lampang, Lamphun, Sukhothai, Suphanburi and Udon Thani	145
13.	Kalasin, Khon Kaen, Nakhon Phanom, Nakhon Si Thammarat, Narathiwat, Buriram, Pattani, Yala, Loei, Songkhla, Satun and Nong Khai	144
14.	Kamphaeng Phet, Tak, Nakhon Nayok, Nakhon Sawan, Phattalung, Phitsanulok, Phetchabun, Surat Thani and Uttaradit	143
15.	Chainat, Chaiyaphum, Chiang Rai, Maha Sarakham, Mukdahan, Yasothon, Roi Et, Sisaket, Sakhon Nakhon, Nongbua Lamphu and Uthai Thani	142
16.	Phichit, Mae Hong Son, Surin, Ubon Ratchathani and Amnat Charoen.	141
17.	Nan, Phayao and Phrae	140

Note: "Day" means regular working time of an employee which shall not exceed the following working hours, whether the employer shall require the employee to do work for the period less than the regular working time or not.

- (1) 7 Hrs. for work dangerous to health and safety of employee according to the Ministerial Regulation No. 2 (B.E. 2541 (A.D. 1998)); and
- (2) 8 Hrs. for work other than (1).

(*Notification of the Ministry of Labor (No. 6) announced as at December 2, 2005*)

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