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LAWYERS

LEGAL NEWSLETTER

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New Laws and Regulations

- Notice of Board of Investment No. 2/2546 Re: Bases on granting permission to foreign juristic person granted investment promotion to possess land for use as office and residence.
- Notice of the Department of Public Relations Re: Criteria on making advertisement against alcoholic beverages and caffeine mixed beverages through radio and television broadcasting.

Laws and Regulations Updated

- Draft of Public Limited Companies Act (No....) B.E.
- Draft of Royal Decree issued under the Revenue Code describing decrease of Value Added Tax (VAT) rate (No. ...) B.E.
- Draft of the Act Governing Computer Crime B.E.
- Draft of Ministerial Regulations re: Permission on transfer of employee's provident contribution to provident fund and providing of tax incentive.

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**Notice of Board of Investment No. 2/2546 Re: Bases on granting permission to
foreign juristic person granted investment promotion to possess land
for use as office and residence**

Effective: 8 April 2003

Relevant Authority: Board of Investment

This Notice is issued in order to afford convenience to the foreign juristic persons granted investment promotion so that they may hold land ownership for use as office and residence. The significant issues of this Notice are as follows:

1. The following bases shall apply generally in considering each foreign juristic person granted investment promotion to hold land ownership for use as office or residence:
 - 1.1 The ownership of land for use as office of the business granted investment promotion may be held at not more than 5 Rais.
 - 1.2 The ownership of land for use as residence of the executives or experts may be held at not more than 10 Rais.
 - 1.3 The ownership of land for use as residence of workers may be held at not more than 20 Rais.

However, in the case of necessity, the Office may consider each individual case according to suitability.

2. The land for use as office and residence may or may not be located within the same compound as the land used as place of business.
3. The land must be disposed of or transferred within 1 year when the status as a promoted person has ceased.
4. These bases shall apply to the applications submitted within 31st December 2007.

Notice of the Department of Public Relations Re: Criteria on making advertisement against alcoholic beverages and caffeine mixed beverages through radio and television broadcasting

Effective: 1 October 2003

Relevant Authority: *Priminister's Office, the Department of Public Relations, the Office of Food and Drug Administration and the Office of the Board of Consumer Protection*

The significant issues of the Notice acknowledged by the cabinet at the cabinet's meeting on 23 September 2003 are as follows:

1. Advertisement against all kinds of alcoholic mixed beverages, whether liquor, wine, beer, satho (Thai rice wine) or other beverages containing alcohol in quantity of more than 0.5 per cent of weight, through radio or television broadcasting during 5.00 a.m. until 10.00 p.m. shall not be allowed, except for anyone of the following cases:
 - (1) Dissemination of only the picture of trademark, product name or name of the manufacturer of the beverages containing alcoholic mixture, in association with broadcasting of any sports competition held within the country or sports program held overseas;
 - (2) Dissemination of picture of trademark, product name or name of the manufacture of beverages, which is the same trademark or name of product or goods having no alcoholic mixture, and without reference to the product containing alcoholic mixture;
 - (3) Dissemination of specific name of radio or television program, which has the combination of name of product or name of the manufacture of the beverages containing alcoholic mixture, and such kind of dissemination cannot be avoided or corrected. However, the aforesaid dissemination must not display associated picture of the product inviting for consumption, or must not state any indication, interest or quality of such product.
2. The advertisement of alcoholic mixed beverages and the advertisement prohibited according to No. 1 made during 10.00 p.m. until 5.00 a.m. shall be allowed only by way of presenting corporate image. However, such advertisement must not be made by means of persuading for consumption or representing properties of the alcoholic beverages, according to the regulation prescribed by the office of Food and Drug Administration ("**FDA**") or the office of the Board of the Consumer Protection ("**BCP**").

The advertisement by way of presenting corporate image of any company or business shall mean the dissemination of picture of trademark, name of product or name of alcoholic mixed beverages by means of promoting merit, culture or goodwill of

society, without advertising the persuasion or motivation for consumption. Such advertisement must appear superscript warning statement or warning sound script against the consumption, with respect to the regulations prescribed by FDA.

3. The advertisement allowed according to this Notice must be made in good faith and be creative, and must not be made by way of providing goods distributed or giving away as prize by drawing lot or as gift.
4. In case any manufacturer or operator of radio or television broadcasting is not clear whether its advertisement can be made in accordance with this Notice, it may seek for ruling from and by sending the sample of the actual advertisement to the cooperative working group which shall consist of representatives from the Department of Public Relations, FDA, BCP and the association for the business advertisement of Thailand. Such working group must reply for the ruling within three (3) days from the date of receipt of a written request, and is also empowered and has duties to give advice, follow up, monitor and give warning on any performance which is not in compliance with this Notice.
5. This Notice shall apply to the advertisement through radio and television broadcasting only. The presentation of picture and sound or reference to alcoholic beverages through other kinds of programs or other media, e.g. for displaying of movie, soft opera show, song content, documentary program *via* radio and television broadcasting, or printed matter, billboard or any other media, shall be made in compliance with relevant notifications or regulations.
6. The provisions of Nos. 2, 3, 4 and 5 shall apply, *mutatis mutandis*, to the advertisement for caffeine mixed beverages, even though such advertisement can be made without time restriction.
7. This Notice shall come into effect from 1 October 2003 until 31 March 2004. Thereafter, this Notice shall be subject to assessment for re-consideration on the appropriation of the provision of Notice once again.

Note: FDA has issued two notifications, by virtue of section 41 of the Food Act B.E. 2522 (A.D. 1979), in order to follow the above Notice of the Department of Public Relations. The significant principles of those two notifications of FDA are to define and clarify the meaning of key words, e.g. “alcoholic mixed beverages”, and “corporate image advertisement”, including to specify guideline for advertisement in order to be in accordance with law. The existing out-door advertisement made before 1 October 2003 and inconsistent with the above notification of FDA shall be allowed only for a period of not exceeding 90 days from 1 October 2003.

Draft of Public Limited Companies Act (No.....) B.E.

Status: Approved in principle by the Cabinet and shall be forwarded to the Council of State for consideration prior to launching to the parliament.

Relevant Authority: Ministry of Commerce and Securities and Exchange Commission

Significant issues of this draft are as follows:

1. Specify definitions of “Parent Company” and “Subsidiary Company”.
2. Cancel the provision prohibiting any public limited company from being partner in any ordinary partnership or being partner who has non liability limitation in any limited partnership.
3. Increase the authority of the Minister of Commerce in order to issue notification with respect to performing in compliance with the Act.
4. Prescribe the holding of shares between Parent Company and Subsidiary Company, that the Subsidiary Company can hold shares in its Parent Company in the amount not exceeding 50 per cent of all issued shares of the Parent Company. However, such share holding information must be disclosed in accordance with regulations prescribed by the Minister.
5. Prescribe that a quorum constitution of the board of directors shall consist of not less than half number of the directors in the board of directors specified in the Articles of Association attending the meeting.
6. Prescribe that the notice of the board of directors meeting can be sent by any new technology method other than letter. However, information and details of the board meeting which must be notified, must be clear in the same way as the notice of shareholders’ meeting.
7. Prescribe that the any public limited company must be responsible for any expenses occurred in taking action for any shareholder who exercises his/her right to file a court suite, on behalf of the company, against any director who acts or neglects in any action which causes or may cause damages to such company.
8. Prescribe that certain transactions related to purchasing, selling, renting or transferring of business or of material assets must be approved by the resolution of the shareholders’ meeting. The principle for considering the material assets shall be in compliance with the regulations prescribed by the Minister.
9. Change the existing penalty under the Act to be more appropriate.

**Draft of the Royal Decree issued under the Revenue Code describing Decrease of
Value Added Tax (VAT) Rate (No. ...) B.E. ...**

Status: Approved in principle by the Cabinet and forwarded to the Council of State for consideration.

Relevant Authority: Ministry of Finance

In order to maintain motivation for economic growth, the rate of VAT according to Section 80 of the Revenue Code shall be decreased to be the following rates:

1. 6.3 per cent for sale of goods, providing of services or importation of all kinds of which the liability on payment of VAT occurring from 1 October 2003 until 30 September 2005; and
2. 9.0 per cent for sale of goods, providing of services, or importation of all kinds of which the liability on payment of VAT occurring from 1 October 2005, onwards.

Draft of the Act Governing Computer Crime B.E. ...

***Status:** Approved in principle by the Cabinet and forwarded to the Council of State for consideration prior to launching to the parliament.*

***Relevant Authority:** Ministry of Information and Communication Technology*

The significant issues of this draft are as follows:

1. Describe the definitions of various wording, e.g. “Computer System”, “Computer Data”, and “Computer Traffic Data”;
2. Describe the nature of offense and penalty stipulation according to the offense related to confidentiality, repletion and operation of computer data and computer system, as well as describing the ground of computer crime offense;
3. Describe the authority of relevant state officer.

Draft of Ministerial Regulations Re: Permission on Transfer of Employee's Provident Contribution to Provident Fund and Providing of Tax Incentive

Status: Approved in principle by the Cabinet and forwarded to the Council of State for consideration.

Relevant Authority: Ministry of Finance

The significant issues on drafts of two Ministerial Regulations regarding the transfer of employee's contribution to provident fund and the provision of tax incentive are as follows:

1. **Draft of Ministerial Regulation No. (B.E.) issued under the Provident Fund Act B.E. 2530 (A.D. 1987) ("Act"):** Describing regulations on the transfer of any employee's provident contribution, allocated or reserved by his/her employer, or collected by the employee separately from other money to be used as expenses in case the employee resigns from work, to be the new provident fund under the Act, provided that the existing such fund has been established before the enforcement date of the Act.

The applications for said transfer of provident contribution and for registration for a new provident fund, where the above provident contribution will be transferred, shall be made within 30 December 2004 and in compliance with the notification prescribed by the Registrar.

2. **Draft of Ministerial Regulation No. ... (B.E.) issued under the Revenue Code:** Describing that the contribution paid by any company or juristic partnership into a provident fund under the law governing provident fund shall be considered as expenditure for computation of net profit and loss according to the Revenue Code.

Note: The purpose of these drafts are to encourage the transfer of employee's provident contribution, collected before the enforcement date of the Act to the current provident fund system and to promote registration for establishment of new provident fund by a company or juristic partnership having provident contribution for paying to its employee in case of the resignation of the employee, which will be beneficial to the employee and labor relation system.