

Legal Update

🏛️ AMENDMENT TO CIVIL AND COMMERCIAL CODE

Due to the enactment of the amended Civil and Commercial Code (“**CCC**”) which has been enforced from the beginning of July 2008, in practice, some problems have occurred from applying with such amended CCC, especially, the provision relating to the notice for a shareholders’ meeting which must be published at least once in a local newspaper. Therefore, the Ministry of Commerce has considered that the amendment to some provisions relating thereto as well as other matters for solving such problems and creating more flexibility should be made. At present, the draft of the amendment to CCC is under the process of consideration by the minister and such will be forwarded to the Cabinet and the House Representative, respectively, for further consideration and approval at a later stage.

Certain significant provisions of such amended draft are summarized as follows:

1. Any registrations relating to the partnership or company can be registered at any Partnerships and Companies Registries to be prescribed under the ministerial notification (formerly, at the Registration Office where the principle business office of the partnership or company is situated only).
2. The registered Memorandum of Association (“**MOA**”) will be deemed revoked if the company is not registered within ten years from the date of registration of such MOA (additional provision).
3. At any directors’ meeting, the directors shall attend the meeting in person at the place as specified in the calling notice unless the Articles of Association of the company states otherwise by allowing the directors’ meeting to be held through any kind of technology communication (such as through video conference, etc.). In such case, the directors’ meeting shall be effective only when all directors who attend the said meeting have confirmed their attendance and their resolution to the company in writing.
4. The notice of a shareholders’ meeting shall be sent to the shareholders via registered AR mail or by hand delivery only (formerly, shall be published at least once in a local newspaper **and** shall be sent to the shareholders via registered A/R mail or by hand delivery). Except for the company issued the share to bearer, the notice of a shareholder’s meeting shall also be published at least once in a local newspaper.

Source: <http://www.dbd.go.th> – July 2009

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**📌 RULES, PROCEDURES AND CONDITIONS IN RESPECT OF
PARTIAL BUSINESS TRANSFER TRANSACTIONS**

In exercise of the Royal Decree issued in accordance with the Revenue Code prescribing the exemption of Value Added Tax (VAT), Specific Business Tax (SBT) and stamp duty in respect of the partial business transfer between a limited company and/or a public limited company, on 3 July 2009, the Director-General of the Revenue Department has prescribed the Director-General's Notification in respect of the rules, procedures and conditions of partial business transfer transactions for purpose of tax exemption under the said Royal Decree. The said Director-General's Notification shall be in effect during 1 January 2009 until 31 December 2009.

Certain significant provisions of the said Notification are summarized as follows:

1. The partial business transfer transactions must be made between a limited company and/or a public limited company registered under Thai law which are the same affiliated companies as defined in Section 39 of the Revenue Code. The relationship of such affiliated companies shall be continued not less than six months from 31 December 2009.

The affiliated companies shall also include the case that the transferor holds shares in the company which holds the shares in the transferee not less than 99 percent of all shares having the voting right of such company and the transferee, respectively, except in case there is a change in shareholding structure of the transferee after the business transfer, there still remains more than 50 percent of all shares having the voting right of the transferee.

In addition, the transferee shall have the registered and paid-up capital not less than the price of net transferred asset.

2. Prior to the business transfer, the transferor and transferee shall jointly prepare and provide the letter notifying the business transfer together with the organization restructuring plan and the list of transferred assets to relevant Revenue Office as specified in the Notification. The partial business transfer transactions shall be completed within 31 December 2009.
3. The transferred assets must be involved with the business so transferred which is not the normal sale and the transferee must manage the assets so acquired in the same kind of operation or in the related business.

In case of transferring assets without remuneration or with remuneration lower than the market value, the authority shall have power to assess the remuneration in accordance with the market value on the date of transfer.

4. In case the transferor is a VAT registrant, the transferee shall also be the VAT registrant and use the transferred assets for the operation of its VAT business.
5. The transferor and transferee shall not be accrued debtor of the Revenue Department as at the date of transfer unless the security is provided in accordance with the regulation of the Revenue Department.

Source: <http://www.rd.go.th> – July 2009

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📌 DRAFTS OF BUSINESS SECURITY ACT AND AMENDMENT TO CIVIL AND COMMERCIAL CODE

The Cabinet on 9 July 2009 approved the draft Business Security Act (“**BSA**”) and the draft amended Civil and Commercial Code (“**CCC**”) in accordance with draft BSA as proposed by the Ministry of Finance in order that various properties having value in economy can be utilized as security for obtaining facility / loan.

It is because the properties to be utilized in the current systems of security under CCC by way of mortgage are restricted only immovable property and certain movable properties. And in case of pledge, the pledged property must also be delivered to the creditor. Thus, in practice, some other properties that may have value in economy, e.g. business operation, right of claim, machinery, inventory, raw material of production, cannot be utilized as the security for obtaining facility/loan. The proposed laws will be able to support the business operators to provide such other properties having the value in economy as security for obtaining facility to support their business operations.

Followings are certain significant provisions that have been prescribed in the draft BSA:

1. The properties which are able to be utilized as security, such as business operation, right of claim, machinery, inventory, raw material of production etc.
2. The entering into the business security agreement and the registration of the business security with the Department of Business Development, Ministry of Commerce (“**DBD**”).
3. The rights and duties of the security provider and security receiver, such as the security provider shall have right of possession, right of usage, right to transfer or dispose of the security, and the security receiver shall have the right to inspect the secured property.
4. The rank of preferential right of the security shall be in order according to the date and time of registration for both registrations of mortgage and security under this law.
5. The procedures for security enforcement are divided into two cases, i.e. (i) the security in form of business must be proceeded with by an expert having the license from DBD, and (ii) the securities in form of other properties can be enforced by creditor.

Also, CCC shall be amended to be in line with draft BSA, i.e. the creditor shall be able to receive payment from the debtor in full amount of debts even in case of the mortgage enforcement that the price of the mortgaged property is lower than the outstanding debts or the net proceeds derived from sale of auction is lower than the outstanding debts. In addition, the mortgagor shall not be liable for the difference thereof.

Source: Ministry of Finance News No. 84/2552 on 9 July 2009

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