

## Legal Update

### **PERSONAL INFORMATION PROTECTION**

On 6 October 2009 the Cabinet approved in principle the draft Personal Information Protection Act (“**PIPA**”) which is the law protecting general personal information from being used and/or disclosed in improper or illegal way and prescribing criteria and methods in collecting personal information. This draft will be forwarded to the House Representative, for further consideration and approval in the later stage.

Certain significant provisions of the said draft PIPA are summarized as follows:

1. Prescribing authorities and duties of the Personal Information Protection Commission that shall have authority to prescribe policy, measure, guideline, and propose of the new law for protecting personal information.
2. Prescribing criteria, procedures and conditions in collecting the personal information, such as prohibition in collecting forbidden personal information (information relating to sexual behavior, criminal record, offense or punishment record, health record, origin of nationality and race, political opinion, religion or any information which may be effect to the reputation, discrimination or unfairness etc.).
3. Prescribing criteria in using and/or disclosing of the personal information which shall be required to obtain the prior written consent from the information’s owner and the exceptions thereof (such as for purpose of medical purpose and keep such as confidential information).
4. Prescribing criteria, condition and practices of the personal information controllers for business or commercial purpose.
5. Prescribing rights of the personal information owner as well as penalty / punishment in the event of violation or failure to comply with PIPA and/or relevant regulations thereof.

### **CANCELLATION OF NON-JURISTIC BODY OF PERSONS REGISTRATION**

The Revenue Department (“**RD**”) has proposed the Ministry of Finance to approve for the amendment to the Revenue Code in respect of the cancellation of a non-juristic body of persons’ registration. Since many applicants have registered a non-juristic body of persons for illegal activities, such as to avoid paying tax and/or to reduce the payable tax amount. Moreover, the registration of such entity under the Revenue Code has not been made in conformity with the provisions of Civil and Commercial Code. Consequently, RD has then proposed to amend the Revenue Code by cancelling the registration of a non-juristic body of persons.

During the enforcement of current law, the applicant is still entitled to register a non-juristic body of persons, but the revenue official will investigate the applicant more strictly. The applicant shall be required to clearly specify the registered activity which is not a non-profit business and such entity is not registered for the purpose of sharing revenue basis or avoiding taxes.

### **Vickery & Worachai Ltd.**

*Lawyers*

16th Floor, GPF Witthayu Towers A, 93/1 Wireless Road, Bangkok 10330, Thailand  
Telephone: (66) 02-256-6311, 02-650-9691, Fax: (66) 02-256-6317/8  
Email: [vwlaw@loxinfo.co.th](mailto:vwlaw@loxinfo.co.th), Website: [www.v-w.co.th](http://www.v-w.co.th)

 **AMENDMENT TO  
THE ENHANCEMENT AND CONSERVATION OF NATIONAL ENVIRONMENTAL QUALITY ACT**

Consequently after the Administrative Court's order relating to 76 industrial projects in Map Ta Phut and nearby areas in Rayong Province On 13 October 2009, the Cabinet approved in principle the draft amendment to the Enhancement and Conservation of National Environment Quality Act B.E. 2535 ("**Act**") prescribing relevant criteria and procedures to be consistent with Article 67 of the current Constitution which requires that the project developers for any projects or activities which may affect to the health and environment of communities shall (i) study the Environment Impact Assessment ("**EIA**") and Health-Impact Assessment ("**HIA**"), (ii) arrange for public consent, and (iii) obtain the approval from the Independent Environment Body ("**IEB**") prior to commencement of the projects.

Certain significant provisions of the draft ECNEQA are summarized as follows:

1. The Natural Resources and Environment Minister is empowered to issue relevant notifications prescribing (i) the types of projects or activities which may have serious effects against communities, (ii) criteria in preparing EIA report containing both environment and health impact assessment, and (iii) the arrangement of public hearings thereof.
2. The appointed Specialized Committee shall be the authority in charge in considering the said EIA report.
3. Further, the Office of National Resources and Environment Policy and Plan shall also provide the EIA report to an organization that is registered as IEB under this Act for giving its opinion to the authority in charge of approving the projects whether it will approve or disapprove such report or not.
4. IEB shall consider and give its opinion within 90 days from the date of receiving the EIA's report. If IEB's opinion is not given within such period, it is deemed the approval from IEB is granted.
  - 4.1 In case IEB's approval is given, the case shall be proposed to the Cabinet or relevant authority in charge, as the case may be, for further consideration.
  - 4.2 In case IEB's disapproval or different opinion is given, the Specialist Commission shall reconsider and give the opinion thereof which shall be deemed the final opinion. Thereafter, the case shall be proposed to the Cabinet or relevant authority in charge, as the case may be, for further consideration.

While the draft Act is pending on the parliamentary approval, the National Environment Board will issue a regulation for temporary enforcement.

**Vickery & Worachai Ltd.**

*Lawyers*

16th Floor, GPF Witthayu Towers A, 93/1 Wireless Road, Bangkok 10330, Thailand  
Telephone: (66) 02-256-6311, 02-650-9691, Fax: (66) 02-256-6317/8  
Email: [vwlaw@loxinfo.co.th](mailto:vwlaw@loxinfo.co.th), Website: [www.v-w.co.th](http://www.v-w.co.th)

**THE CANCELLATION OF SEAL/EMBOSSSED SEAL/ COLOR SEAL  
UNDER THE CONDITION OF DRAWING ON CHEQUE**

The Bank of Thailand (“**BOT**”) issued the letter No. ForRorChor.(12)Wor.123/2552 dated 11 August 2009 to the commercial banks and special governmental financial institution relating to the cancellation of seal/ embossed seal/ color seal under the condition of drawing on cheque.

According to BOT’s development on the imaged cheque clearing and archive system (ICAS), it is concluded that the affixation of the seal/ embossed seal/ color seal on the cheque shall affect to the approval on cheque clearing of the bank drawee because such seal will disturb verification of signature and significant information on the imaged cheque. Also, the bank drawee cannot verify the embossed / color seal on the imaged cheque from ICAS.

In order to operate ICAS efficiently and conform with the purpose of imaged cheque clearing, BOT has then requested the commercial banks to notify and request their customers for cooperating in the cancellation of the seal/ embossed seal/ color seal as an condition of drawing on cheque and for remaining the condition by having only the drawer’s signature without seal.

*Remarks:*

- According to the Civil and Commercial Code (“**CCC**”), it requires only that every share certificate issued by a private limited company shall be affixed with the seal. However, the seal of such company is not required to be registered with the Department of Business Development (“**DBD**”) except when the director’s authorization is required to be affixed with the seal.
- According to the Public Limited Companies Act B.E. 2535 (A.D. 1992), a public limited company is not required to have or registered the seal. Nevertheless, If the director’s authorization is required to be affixed with the seal, the registration of such seal with DBD shall then be required by stating in the Articles of Association of such company.
- Currently, in order to avoid any difficulty or problem in verification of the seal’s authentication, many companies have then decided not to use the seal as a part of the director’s authorization and/or their banking transaction conditions.

**Vickery & Worachai Ltd.**

*Lawyers*

16th Floor, GPF Witthayu Towers A, 93/1 Wireless Road, Bangkok 10330, Thailand  
Telephone: (66) 02-256-6311, 02-650-9691, Fax: (66) 02-256-6317/8  
Email: [vwlaw@loxinfo.co.th](mailto:vwlaw@loxinfo.co.th), Website: [www.v-w.co.th](http://www.v-w.co.th)