

NEWSLETTER

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1. Actual Payment for Shares Subscription is Under Scrutiny

Up to this point, in registering a formation or capital increase, limited companies and juristic partnerships in Thailand do not have to furnish the Department of Business Development with any proof of any actual payment for the shares/partnership interest subscription. Company's authorized directors and managing partners only have to confirm to the department that the subscription payment is received without a need to supply any records/evidence. This policy leads to a bad practice that a business owner registers a limited company (and to less extent a partnership) with a high registered capital, but does not really contribute any cash or assets to the company. Once the company is incorporated, a shareholder may claim to take out a loan from the company and puts the loan on company's accounting book. As a result of the misled high registered capital, company's counterparty (especially its creditor) ends up getting a wrong impression of company's financial standing.

The Director General of the Department of Business Development issues the Instruction of the Central Company and Partnership Registration No. 230/2557 Re Stipulation of Criteria and Documents in Support of Applications for Formation and Capital Increase of a Partnership and a Company (the "Instruction") to require a limited company and a partnership to furnish the Department of Business Development with proof of shares/partnership interest subscription payment either cash payment or noncash (asset) payment when a company/partnership is initially formed or subsequently increases its capital.

Effective January 5, 2015, the Instruction only applies to a company or a partnership with the registered capital in excess of Baht 5 Million.

For more information, please contact our lawyers for consultation.

2. Introduction of Company's Affidavit in English

To prepare the country for the Asean Economic Community, the Department of Business Development begins to issue a Certification Document (Affidavit) in English for a limited company and a partnership on a limited basis. At present, all company and partnership particulars are registered in Thai. Apparently, the department does not have the data base in English to issue any Certification Document (Affidavit) in English. From October 1, 2014, the department requires a new company/partnership or an existing company/partnership that registers any change to the particulars with the department to file an English version of the Certification Document (Affidavit) to the department. The department has just begun to collect the data in English of existing companies and partnerships since October 1, 2014.

From January 5, 2015, the department commences to issue the Certification Document (Affidavit) in English to the following companies and partnerships:

- (i) Any limited company/partnership that was registered for formation on and after October 1, 2014 and entirely adopted department's standard objectives without any amendments;
- (ii) Any existing limited company/partner that was registered for formation prior to October 1, 2014, but registered any change to the particulars with the department from October 1, 2014 and entirely adopted department's standard objectives without any amendments.

It is noted that any company/partnership that does not need to register any change to its particulars with the department may voluntarily notify the department of the first name and the last name of all directors/partners and the address of the head office in English to enable the department to issue the Certification Document (Affidavit) in English.

While this is a good starting point, many companies still have not adopted department's standard objectives entirely and are not qualified for this English service. Most likely they adopt department's standard objectives and add other objectives. For more information, please contact our lawyers for consultation.

3. New Debt Collection Law

Justice delayed is justice denied. Our legal system offers each side an opportunity to present their case to the court as well as an opportunity to appeal against a judgment of a trial court to the Court of Appeals and eventually the Supreme Court. The entire process takes years. On the top of that, the Legal Execution Department takes some time to seize and put up judgment debtor's assets for public action.

When a creditor attempts to use a legal system to collect any unpaid debt from a debtor, obviously the lengthy due process bothers many creditors. Many creditors decide to skip the legal system by engaging a debt collector to collect debt from a debtor. Use of debt collectors becomes so popular so as the debt collection becomes an industry of its own. But some debtors complain that some of debt collectors use dirty tactics to make a collection i.e. making a false impression that a demand for payment is issued by a court, a state officer or state agency.

The National Legislative Assembly passes the Debt Collection Bill (the "Bill") to regular how a debt collector can do in collecting debt from an individual debtor and an individual guarantor. Under the Bill, there are limitations on how a debt collector can do in an effort to collect the debt from a debtor.

1. A debt collector must now register with a registrar prior to operate a debt collection business.
2. A debt collector must contact a debtor at debtor's designated address. If the debt collector cannot reach the debtor at the designated address, the debt collector may contact the debtor at a domicile, a residence or work.
3. A debt collector may contact a debtor by phone, or electronic media from 8:00 to 20:00 on weekdays and 8:00 to 18:00 on official holidays.
4. A debt collector must furnish a debtor with debt collector's first name and last name or name of debt collector's organization, creditor's name and the amount of debt. If the debt collector makes a demand in person, the debt collector must present a proof of creditor's authorization to the debtor.

5. If the debtor pays the debt collector in good faith, it shall be deemed that the payment is made to the creditor regardless of whether the debt collector is duly authorized by the creditor to receive the payment from the debtor or not.
6. A debt collector may not offer or entice a debtor to issue a check despite the knowledge that the debtor is not in a position to pay the debt.

The Bill imposes certain prohibitions on a debt collector.

1. A debt collector may not use any threat, violence or do otherwise that might cause any damages to a body, a reputation or property of a debtor or any third party.
2. A debt collector may not use any insulting tone or language to the debtor or any third party.
3. A debt collector may not notify or disclose debtor's indebtedness to any third party who is not involved with the debt collection.
4. A debt collector may not use any postal material or other material that indicates a debt collection.
5. A debt collector may not make any false impression that a demand notice is issued by a court, a state officer or state agency.

When a creditor engages any debt collector, the company must ensure that the debt collector is trustworthy. Once a debtor decides to pay debt to the debtor collector in good faith, the debtor is deemed to pay the debt to the creditor regardless of whether the debt collector is duly authorized by the creditor to receive the payment from the debtor or not. (In some case, the creditor still prefers to get paid directly to its own bank account, even if the creditor has already engaged the debtor.)

For more information, please contact our lawyers for consultation.

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