



Legal News

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The Business Collateral Act B.E. 2558 (A.D.2015)

The Business Collateral Act B.E. 2558 (A.D.2015) (“the Act”) will be effective on 2 July 2016. This Act permits property with economic value to be used as security without delivering such property to the creditor. The key points in relation to the Act are summarized as follows:

- The Business Collateral Contract is the contract where one person, called the “Security Provider”, grants security over property to another person, called the “Security Receiver”, as security for the performance of an obligation of the Security Provider or any other person, without delivering such property to the Security Receiver.
- The Security Receiver must be a financial institution or the person as prescribed by the Ministerial Regulation.

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Inside this issue:

- The Business Collateral Act B.E. 2558 (A.D. 2015)
- The Ship Mortgage and Marine Liens Act (No.2) B.E. 2558 (A.D. 2015)
- The Bank of Thailand has expanded the scope and the financial amount for investments in immovable

- The collateral can be the following: A business; A claim; Movable property used in the Security Provider's business, such as machinery, inventory, or raw materials; Immovable property in case the Security Provider conducts real property business; Intellectual property; or Other properties as determined by the Ministerial Regulation. The property which the Security Provider is entitled to acquire in the future under any contracts or any juristic relations may be used as collateral (e.g. rights to lease). Nonetheless, the rights over such property being used as collateral shall arise only after the Security Provider has acquired such property.
- "A business" means the property that the Security Provider used in business; and rights in relation to conducting such business that the Security Provider use as security for performance of an obligation. The Security Provider may transfer such property or rights to other person in the manner that such person can promptly continue the business operation.
- The business collateral contract must be made in writing and registered before the Registrar. The contract must also specify a licensed collateral executor.
- The Security Receiver shall have right to the performance of obligations from the collateral prior to the ordinary creditors, regardless of the ownership of such property has been transferred to any other person. In case a property is used as security of performance of the obligations of two or more Security Receivers, the order of the Security Receiver shall be upon the date and time of registration respectively. The first Security Receiver registered shall be the first to receive the performance of obligations.

Additionally, there is an amendment to Section 305 of the Civil and Commercial Code to be in accordance with this Act, which became effective on 6 November 2015. The amendment is that the right of the business collateral existing with the transferred claim shall pass to the transferee.

properties in foreign countries

- Ministry Of Commerce Rulings on Business Operations of Foreign Companies in Thailand

The Ship Mortgage and Marine Liens Act (No.2) B.E. 2558 (A.D. 2015)



The Ship Mortgage and Marine Liens Act (No.2) B.E. 2558 (A.D. 2015) ("the Act") will be effective on 6 January 2016. The key amendment is to allow a mortgage on "the vessel under construction" as security for a loan.

Previously, Thai law only allowed a completely built vessel to be registered for a mortgage as security for a loan.

The vessel under construction qualified to be mortgaged shall be the vessel which can be mortgaged under the Ship Mortgage and Marine Liens B.E. 2537 (A.D. 1994) when the construction of the vessel is completed. Once the mortgage contract has been made, its effectiveness shall continue for the vessel when the vessel is completely built as well. In addition, the Act prescribes that the mortgage of the vessel under construction shall also have effect to the attached or installed materials, machines and vessel equipment on the vessel under construction.

The Bank of Thailand has expanded the scope and the financial amount for investments in immovable properties in foreign countries



Notification of the Competent Officer Re: Rules and Practices Regarding Currency Exchange No. 22 became effective on 24 June 2015 whereas the Bank of Thailand ("BOT") has expanded the scope and the financial amount for investments in immovable properties in foreign countries to include investments in purchasing leaseholds of immovable properties in foreign countries or any expenses for renovations of immovable properties in foreign countries. The BOT has expanded the financial amount for investments in foreign immovable properties to not exceed USD 50,000,000 or its equivalent at the market rate per individual per year.

An investor purchasing immovable properties in foreign countries or purchasing of leaseholds of immovable properties in foreign countries or paying expenses for renovations of immovable properties in foreign countries is obligated to submit evidence to authorized juristic persons as follows:

1. Evidence showing that there will be a purchase of an immovable property or a leasehold of an immovable property e.g. an agreement to sell and purchase land or a land sale and purchase agreement in case of purchasing an immovable property or a leasehold of an immovable property; and

2. Evidence in No.1 or evidence clearly showing ownership or a leasehold of an immovable property including any evidence showing expenses incurred for the renovation of immovable property, e.g. invoices issued by furniture sellers or designers, etc., if applicable.

Ministry Of Commerce Rulings on Business Operations of Foreign Companies in Thailand



International trading

A foreign company registered to do business in Thailand (“ThaiCo”) together with a Japanese company (“JPCo”), would like to sell products to a distributor (“Buyer”) in Vietnam for resale of such products to customers located in Vietnam. ThaiCo will initiate contact and negotiate with the Buyer, receive and forward the purchase order to JPCo. JPCo will then deliver the products directly to the Buyer. The products will not pass through Thailand. The Buyer will pay for the products directly to ThaiCo and ThaiCo will then forward the allocable portion attributable to JPCo. This trading transaction is considered as trading product abroad and not considered a business under the list of the Foreign Business Act B.E. 2542. ThaiCo can operate such business without having to request permission from the Thailand Ministry of Commerce. The Company must have a minimum capital of not less than 2 million Baht excluding the capital required by other laws for operating such business, if applicable.

Consignment

On the sale of the product by way of the sales counter of a consignee (consignment), the ownership of product belongs to the consigner and will pass to the buyer when the product is sold by the consignee. The consignee will then receive a commission for the sale in return. The consigner will receive the sales price at the agreed rate, regardless of the sales price paid by the buyer. In this regard, the sale by the consignee of products of the consigner is considered as a retail business under the list 3 (14) of the Foreign Business Act B.E. 2542. The basis for this is because the buyer purchases the product from a sales counter while the ownership of product belongs to the consigner and the buyer is an end-user, not the re-seller.

Contact

For more information on the above and how Deloitte can support you, please contact:

Poljun Divari

Director, Tax & Legal Services

pdivari@deloitte.com

+66 (0) 2676 5700 ext. 11231

Pornpun Niyomthai

Director, Tax & Legal Services

pniyomthai@deloitte.com

+66 (0) 2676 5700 ext. 10404

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Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.

Rajanakarn Bldg., 25th – 26th, 28th Fl.

3 South Sathorn Road, Yannawa, Sathorn, Bangkok 10120

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