



Legal News

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The Amendment of the Civil and Commercial Code on Suretyship and Mortgage

The Amendment of the Civil and Commercial Code Act (No. 21) B.E. 2558 (A.D.2015) (“Act”), which was effective on 15 July 2015, has amended the provisions for suretyship and mortgage to be more suitable for current business practice. The surety, who is a juristic person, may agree to be liable as the joint debtor, which results in the surety not being able to request the creditor to call upon the debtor prior to performing the surety’s debt obligation. In the case where the creditor possesses the debtor’s assets, the surety shall not be able to request the creditor to foreclose on such assets prior to the surety’s

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performance required as joint debtor. In case the surety is a financial institution or engaging in the guarantee business, the surety can initiate advance consent for the extension of time granted by the creditor.

In addition, other key amendments of the Act include:

- The agreement that makes the surety jointly liable for the debt shall be void if
 - it is not clearly specified in the contract, or
 - the future debt does not specify the limitation amount of the guarantee, or
 - the creditor is not required to notify the surety in writing of the debtor default.
- In cases where a mortgagor mortgages assets to guarantee for another party's debt with the agreement that has a condition where the mortgagor is liable in excess of the value of the mortgaged assets at the time of execution or foreclosure of the mortgage, such a condition shall be void. In addition, if the mortgagor is liable as the surety, regardless of whether such a condition is part of the mortgage contract or separately made, such a condition shall be void, unless the debtor is a juristic person, and its management person is mortgaging assets to guarantee the juristic person's debt and such mortgagor has made the suretyship contract.
- Any agreement being made during the time which the Amendment of the Civil and Commercial Code Act (No. 20) B.E. 2557 (2014) was in effect, i.e. between 12 February to 14 July 2015, shall remain effective if it does not violate or conflict with the provisions amended by the Act.
- In cases where any performance of the creditor occurred during 12 February to 14 July 2015 resulted in reducing the amount of debt guaranteed, the creditor shall notify the surety in writing of such agreement within 60 days from the effective date of the Act and the surety shall be free from the surety liability as conditioned in Section 691.

MOC Rulings on Business Operations of Foreign Companies in Thailand



Inspection and quality control of construction under Turn Key agreement

The performance of inspection and quality control of construction project in Thailand where the foreign head office hires a subcontractor to construct under the agreement so-called "Turn Key" between the foreign head office and project owner in Thailand are not considered as activities covered under the scope of being the Representative Office, i.e. to provide inspection and control of quality and volume of goods that the head office purchased/hired for production in Thailand. Thus, the inspection and quality control of construction in Thailand under the Turn Key agreement is a restricted business under list three of the Foreign Business Act B.E. 2542. A foreign company may only operate such a business by obtaining

permission from the Director-General of the Department of Business Development, Ministry of Commerce with the approval of the Foreign Business Committee.

Retail business via a sale counter of consignee and exporting business

Sales of goods that are not manufactured by the foreign company itself by way of the sales counter of a consignee that receives a commission from total sales is considered as selling to the end-user directly which is a retail business covered under the list 3 (14) of the Foreign Business Act B.E. 2542.

In the case where the foreign company hires the another party to advertise the foreign company's goods and pays for such services by goods of the same value is not considered operating business under the Foreign Business Act B.E. 2542

A foreign company exporting goods from Thailand for sale overseas is not considered a restricted business activity covered under the Foreign Business Act B.E. 2542. The foreign company can operate this business activity in Thailand without having to seek permission to do so. However, the foreign company must have minimum capital of not less than 2 million Baht for commencing the export business.

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