

ANS

HIGHLIGHTS

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Computer Violation Act

The Computer Violation Act which became effective on August 23, 2008 requires internet service providers, businesses, schools, hotels, banks, government agencies, apartment and residential complexes, Internet cafes and game shops to keep Internet traffic information of users for 90 days in order for police to be able to track down persons engaged in cyber crime.

Internet cafés must gather the identity of computer users, log in time, and websites visited.

A fine of between Baht 100,000 to 500,000 may be assessed on violators of this act.



DEPOSIT PROTECTION ACT

Recently the government enacted the Institutes of Deposits Protection Act B.E. 2551 (2008) (Act) which reduces the burden of the Thai Government in backing bank deposits, effective 11 August 2008.

The Financial Institution Development Fund (FIDF), which was the government backed institution that protected public deposits with financial institutions upon bankruptcy or closure, is now replaced by the Deposit Protection Agency (DPA), a state run organization established to guarantee the deposits at financial institutions.

Prior to the ACT, the full amount deposited in Thai banks was fully guaranteed by the FIDF. Thus depositing in commercial banks was viewed as a low risk way to keep and save money.

In contrast, guarantee of deposits by the new DPA will gradually fall from a full guarantee to a maximum guarantee of Baht 1 million per person per bank. Because the Act will limit the government in backing the deposits, keeping money in the banks above the guaranty limit will become more risky.

This act will affect all 34 commercial banks, five finance companies and five credit financiers and is applicable to both individuals and all juristic entities.

The Act requires all financial institutions to submit reserves of at least 0.4 percent of their total deposits, which will be kept at the DPA.

Deposit accounts included under the ACT are current, savings and fixed accounts, but not nonresident Baht accounts.

Gradual Deposit Guarantee Reduction

The maximum amount guaranteed per depositor per financial institution is Baht 1 Million as of 11/08/12. The gradual reduction is stated below:

11/08/08 – 10/08/09	Full amount covered
11/08/09 – 10/08/10	Baht 100 Mil. covered
11/08/10 – 10/08/11	Baht 50 Mil. covered
11/08/11 – 10/08/12	Baht 10 Mil. covered
11/08/12 onwards	Baht 1 Mil. covered

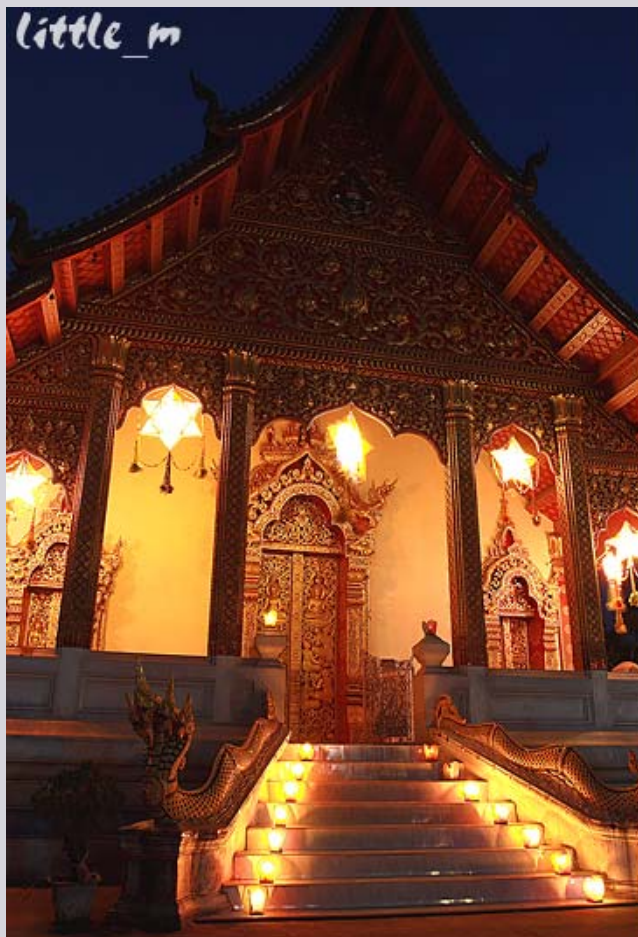
Recommendations

Depositors with more than Baht 1 Million in a financial institution should reconsider the security and the returns of maintaining those deposits. Eventually, deposits over Baht 1 Million will become a higher risk investment with a low return.

Large amount depositors should start considering allocating their deposits with different financial institutions so that the deposit amount does not exceed Baht 1 Million per financial institution by 11/08/12.

Depositors may want to seek other ways to protect their money and generate consistent yields. Depositors may begin by considering investment classes, their risks and their returns.

Some possible investments are: money market accounts, government bonds, corporate debentures, real estate, mutual funds, stock, derivatives, commodities, futures, options, LTFs, and RMFs to begin with.





Company Secretary According to the New Securities and Exchange Act B.E. 2551

On Aug. 31, 2008, the new Securities and Exchange Act B.E. 2551 (ACT) has come into force and will have an impact on many businesses. This article will focus on the newly created company secretary position in public companies by discussing a company secretary's relevance in other countries and its possible role in nonpublic companies.

What is a Company Secretary?

A company secretary is a senior position in a private company or public organization, normally in the form of a managerial position or above. It is also known as a corporate secretary.

In many countries, private companies have traditionally been required by law to appoint one person as a company secretary, and this person usually will also be a senior board member. In Thailand, a corporate lawyer may be used for this task.

Nowadays company secretaries play an important role in many ways related to the management of the company. For example company secretaries may be responsible for governance structures and mechanisms, corporate conduct within an organization's regulatory environment, board, shareholder and trustee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executives and trustees, contact with regulatory and external bodies, reports and circulars to shareholders/trustees, management of employee benefits such as pensions and employee share schemes, insurance administration and organization, the negotiation of contracts, risk management, property administration and organization and the interpretation of financial accounts.

Thus company secretaries have become the primary source of advice on the conduct of business and this can be extended to include legal advice on conflicts of interest, accounting advice on financial reports, and the

development of strategy and corporate planning.

The ACT requires only a public company limited to appoint a company secretary by their board of directors. The company secretary shall have the responsibility to prepare and keep the following documents: (a) a registration record of directors; (b) a notice calling the director's meeting, the minutes of the board of directors meeting and annual report of the company; (c) a notice calling the shareholders' meeting and the minutes of the shareholders' meeting.

Moreover, if a director or an executive of the company has a self interest in the company or personal interest in relation to management of the company, that director shall file with the company a report on his/her interest to the company. The company secretary shall have the duty to keep and submit a copy of the self interest report to the Chairman of the SEC and the Chairman of the audit committee within seven business days from the date the company received such report.

Unlike the limited scope of duty of a company secretary in a public company, the Thai Civil and Commercial Code, on the other hand, does not require the appointment of a company secretary in a private company.

However, there are certain tasks in a private company where a company secretary could be useful. We, therefore, will need to examine what role a company secretary in a private company could have to play.

A private company secretary could be responsible for preparing and keeping the following documents: (1) A list of shareholders including the amending of shareholders or the transferring of shares. The corporate record could need the service of a secretary; (2) the minutes of meetings: twice a year required by law for consideration of mid year and annual year audit report. Since the new rules for

partnerships and limited companies apply starting from 1 July 2008, the shareholder meeting requires a publishing in the newspaper one time and sending notice to summon the meeting to all shareholders by registered post mail at least 7 days before the Ordinary Resolution or 14 days before the Special Resolution; (3) Ordinary resolution and special resolution as required by law; (4) Increase or decrease of capital; (5) Payment of dividends, interim or annual; (6) Dissolution.

The new rules for partnerships and limited companies require a Special Resolution of the shareholders' meeting only one time instead of two successive meetings with more than $\frac{3}{4}$ of the voting rights of the shareholders who attend the meeting. (The previous requirement is to have two meetings by resolution of the first meeting with more than $\frac{3}{4}$ of all voting rights. Then the second meeting has to pass a resolution to confirm the resolution of the first meeting with $\frac{2}{3}$ of all voting rights.)

In addition, the liability for a company secretary under the new ACT includes the performance of his/her duty with care and act in good faith, as well as, compliance with all laws, the objectives, the articles of association of the company, and the resolutions of the board of directors and the shareholders' meeting. Furthermore, Section 89/8 of the ACT regulated that the company secretary must perform such duty with responsibility and due care and act in a similar manner as an ordinary person undertaking the like business under the similar circumstance.

If the company secretary can prove the below requirements, then the company secretary has performed their duty with responsibility and due care.

- The decision has been made with honest belief and reasonable ground that it is for the best interest of the company;
- The decision has been made in reliance of information honestly believed that it is sufficient; and
- The decision has been made without self interest, whether directly or indirectly, in such matter.

Section 89/10 requires the company secretary to perform the duty with loyalty and shall act in good faith for the best interest of the company, act with proper purpose and not act in significant conflict with the interest of the company.

Section 89/11 lists acts deemed to be in conflict of interest. Any of the following acts, which provide a company secretary or a related person to gain any financial benefit other than those that should be ordinarily obtained or causes damages to the company, shall be presumed as an act in significant conflict with the interest of the company including use of known information not

including that already disclosed to the public or use of an asset or business opportunity of the company in contravention to a rule or customary practice as stated in the notification of the Capital Market Supervisory Board.

We can see that the standard of liability of the company secretary in the public limited company is clearly stated but it still does not apply to a private company.

The ACT does not require that the company secretary be represented by a person, thus a juristic person can be appointed to perform the company secretary's tasks for a company. For this reason a company can appoint a highly reliable law firm or audit firm to act as their company secretary to make themselves trustworthy for the shareholders and for the investors.

This new development in public company legislation will have an impact on how to regulate the private company secretary in the future.

Prepared by
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ESCROW ACT

The Escrow Act came into effect in late May, 2008 and is intended to protect both buying and selling parties from possible fraud and deceit through the services of a neutral third party who holds funds, assets, or legal documents for disbursement once stipulated duties are met as agreed to by the parties.

The Act states financial institutions wishing to engage in the escrow business must obtain a license from the Finance Ministry and will be regulated by the Escrow Committee.

The escrow agreement must be signed by the seller, the buyer and the escrow agent. The escrow agent must be a neutral third party and may not have a direct or indirect interest in the commercial transactions of the parties to the agreement.

The funds, assets or documents held in trust by the escrow agent must be kept separately from the escrow agent's personal assets.

The escrow agent is responsible for overseeing that the parties to the escrow arrangement fulfill the terms of the agreement in regards to timeframes, obligations and conditions. Upon a disagreement between the parties, the escrow agent must not transfer the funds, assets or documents to either party until the parties come to an agreement or upon court order.

Although under Thai law it is not necessary to enlist the services of an escrow agent, it may be prudent to enlist such services upon high valued transactions, such as transactions related to real estate.



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