

Explanation

Re: Payment for Capital Increase Shares of Limited Companies and Public Limited Companies by Non-Cash Assets

Due to frequent inquiries made to the Department of Business Development on whether or not in the event of a capital increase by a limited company or public limited company, the company can accept payment for capital increase shares by a non-cash asset. Furthermore, certain persons are of the understanding that the provisions of the Public Limited Companies Act B.E. 2535 (1992) did not clearly state that a public limited company could accept other assets as payment for capital increase shares and suggested that the law on this matter should be amended for greater clarity.

In order to clarify this issue, the Department of Business Development hereby provides the following explanation.

1. A limited company may increase share capital by accepting non-cash assets as payment for additional shares with the approval by special resolution of the shareholders meeting as provided under section 1221 of the Civil and Commercial Code.

2. As for the capital increase of a public limited company, there is some understanding that the law did not clearly state that a public limited company can accept non-cash assets as payment for capital increase shares. We wish to state that this understanding is incorrect. Section 35(5) is a provision on a meeting to establish a company which states that a company may offer the subscription of ordinary shares or preference shares in exchange for non-cash assets. The law provides further that the provision also applies *mutatis mutandis* to the issue of capital increase shares. This is derived from the final paragraph of section 136, which states that the provisions of Chapter 3 and Chapter 5 applies *mutatis mutandis*, and pursuant to Chapter 5, section 54, which states that payment for share subscriptions are subject to section 35(5). In addition, the final provisions of section 137 states that section 38, which provides for the consequences of non-payment for share subscriptions upon demand from the Board of Directors or failure to transfer assets to the Company pursuant to section 37 paragraph two, also applies *mutatis mutandis*. Hence, from the foregoing provisions of law, it is inherently clear that a public limited company is able to accept non-cash assets as payment for capital increase shares.

Department of Business Development
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