



Newsletter No. 51 (EN)

**Resignation of a Director
of a Thai Company**

May 2017

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I. Introduction

According to Sec. 1144 of the Civil and Commercial Code (CCC), the business of a Thai company is run by one or more directors (the board of directors). The board of directors as representative organ of the company is liable towards the company's shareholders and third parties (e.g. contract parties or employees). However, similar to most jurisdictions, creditors can generally only seize the company's assets (Sec. 1096 CCC), but the liability for debts of company may be extended to the directors under Thai corporate law. The board of directors as well as the individual director may become debtors. Accordingly, it is in the interest of any director of a Thai limited company to be able to resign from the director position in order to not be taken liable for debts of the company.

On the other hand, the company and its shareholders are also interested in being able to remove a director to avoid him abusing his director position as he could still bind the company even after termination of his employment.

II. Termination of director status

To formally remove a director from his position, a registration with the Ministry of Commerce is required. If no director is appointed as replacement, a resignation letter of the resigning director or a resolution of a shareholders' meeting has to be presented.

The resignation letter should include the director's declaration to end his status as director of the company. The resignation letter must be signed by the director. The signatures of the remaining directors are not required to make the resignation legally effective,

but they are usually included for formal reasons.

The requirement of the resigning director's signature may lead to problems if he refuses to sign the resignation letter in order to remain his status as director. In this case, an abuse of the director position is imminent, and a shareholders' resolution to remove the director should be obtained.

It should be noted that the requirement of a resignation letter to terminate the director's position also applies if the employment relationship with the director has already been terminated. Similar to most jurisdictions, the corporate status of the director is unrelated to the employment relationship.

III. Registration with the Ministry of Commerce

The termination of the director status becomes effective with signing the resignation letter; the registration with the Ministry of Commerce is only declarative in nature. However, the termination cannot be asserted against third parties until it has been duly registered with the Ministry of Commerce. As a consequence, even if the director already signed a resignation letter, he can still bind the company, although he is internally no longer authorized to do so. In such a case, the company can hold the director liable internally, but cannot disengage from its external obligations.

For example, a director who already signed his resignation letter can still take out a loan on behalf of the company. Although the director was no longer authorized to act on behalf of the company, the lender can demand repayment of the loan from the company, unless the director's resignation has

been duly registered with the Ministry of Commerce at the time of signing the loan agreement.

IV. Avoiding abuse through pre-signed resignation letters

To avoid an abuse as described above and to ensure that the company can remove the director from his position at any time without the requirement to obtain a shareholders' resolution (for which certain notice periods have to be complied with), it is recommended for both parties to pre-sign a resignation letter (see sample annexed hereto). The director delivers the signed resignation to the company, leaving the effective date blank.

The company can now use this pre-signed resignation letter at any time to terminate his director status, without depending on the director's cooperation.

V. Summary

A pre-signed resignation letter should be conditional upon every appointment of a new director. The same applies during the set up of appointment of the company's first directors, who should sign the resignation letter together with their employment agreement. In doing so, the danger of abusing the director status described above can be avoided.

Wir hoffen, dass wir Ihnen mit den vorliegenden Informationen behilflich sein konnten.

Sollten Sie weitere Fragen haben, wenden Sie sich bitte an:

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Annex: Sample Resignation Letter

Date: _____

To: The Board of Directors of _____ Co., Ltd.
Subject: Resignation of Director

I, _____, a director of _____ Co., Ltd. (the “Company”), hereby resign from all of my positions in the Company effective: _____.

Therefore, please kindly inform the Ministry of Commerce about my resignation from the Board of Directors and release me from all liabilities.

Yours faithfully,

(
Signature

Witness _____
(
Signature

Accepted by Authorised Director(s) of _____ Co., Ltd. on: _____

(
Signature

Witness _____
(
Signature

(Company Seal)