



Newsletter No. 9 (EN)

Liquidation of a Thai Company

July 2016

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I. Introduction

Bankruptcy law in Thailand is part of the body of commercial law. It is designed both to help the debtor to rehabilitate, if possible, through the reorganization provision, as well as distribute the debtor's property between creditors. There are currently three types of insolvency procedures in Thailand:

The "straight" bankruptcy procedure

The main feature for straight bankruptcy is to place the debtor under absolute receivership in order to end the business operation of the debtor and to divide the debtors' assets.

The restructuring procedure

This procedure is governed under the bankruptcy legislation. The planner or the plan administrator will administrate the debtor's business. The procedure is aimed to help a debtor who faces a liquidity problem by affording an opportunity to rehabilitate his business before being bankrupted.

The liquidation

During the liquidation process, the liquidator, once he has found that the company's assets do not cover its liabilities, must file a petition to the court to order a bankruptcy. A person may not enter into liquidation voluntarily under the Thai Civil and Commercial Code ("CCC") as the Bankruptcy Act stipulates procedures otherwise.

II. Reasons for the Liquidation

Sections 1247 through 1273 of the Thai Civil and Commercial Code (CCC) are the applicable provisions in the event of voluntary liquidation and dissolution of a private limited company in Thailand by its shareholders. According to Sec. 1236 CCC a company is dissolved:

- In the case, if any, provided by its regulations;
- If formed for a period of time, by the expiration of such period;
- If formed for a single undertaking, by [reaching] the termination of that undertaking;
- By a special resolution to dissolve;
- By the company becoming bankrupt.

According to Sec. 1237 CCC a limited company may also be dissolved by the court on the following grounds:

- If default is made in filing the statutory report or holding the statutory meeting, unless the court directs that the statutory report be filed or the statutory meeting is held, as it may deem fit;
- If the company does not commence its business within a year from the date of registration or suspends its business for a whole year;
- If the business of the company can only be carried on at a loss and there is no prospect of its fortunes being retrieved;

- If the number of the shareholders is reduced to less than three.

III. Liquidation Process

In case the company shall be dissolved by a special resolution, this resolution has to be passed by two successive general meetings (Sec. 1194 CCC). The process will be as follows:

1. The directors or the shareholders of the company have to ask for a special shareholders' resolution to start the liquidation process. Therefore, invitations for such kind of meeting have to be sent out to all shareholders. Notice of the summoning of the general meeting for liquidation shall be published at least once in a local newspaper and sent by post with acknowledgement of the receipt to every shareholder whose name appears in the register of the shareholders not later than 14 days before the date fixed for the meeting (Sec. 1175 CCC). The invitation must mention the topic "liquidation of the company".
2. At the first general meeting at least three-fourths of the votes of the present shareholders who are eligible to vote have to vote in favour for the liquidation and the second general meeting has to be summoned and held not less than 14 days and not more than 6 weeks after the first meeting, unless a longer notice period is required by the Articles of Association of the company. The resolution passed in the first meeting must be confirmed in the second meeting by a majority of not less than two-thirds of votes present (Sec. 1194 CCC).
3. The shareholders shall appoint the liquidator(s) and auditor(s). If no liquidator is appointed, the directors become the liquidators unless otherwise provided by the Articles of Association of the company. The dissolution of the company and the name of the liquidator must be registered at the Company and Partnership Office, Commercial Registration Department, Ministry of Commerce within 14 days after the date of dissolution by the liquidator (Sec. 1254 CCC).
4. The liquidator has the following duties:
 - To notify the public by advertisement at least once in a local newspaper that the company is dissolved and that its creditors must apply for payment to the liquidator(s), and send a similar notice by registered letter to each creditor whose name appears in the books or documents of the company within 14 days after the date of dissolution or after the date of appointment (Sec. 1253 CCC);
 - To settle the affairs of the company, pay back the debts and sell out all assets of the company (Sec. 1250 CCC);
 - To deposit the amount due to a creditor as described by the provisions of the CCC concerning deposit in lieu of performance, if he does not apply for payment (Sec. 1264 CCC);

- To apply to the Court to have the company declared bankrupt, if he finds that after all of the contributions or shares have been paid, the assets are still insufficient to meet the liabilities (Sec. 1266 CCC);
- As soon as possible, make a balance sheet and have it examined and certified by the auditors, and he must summon a general meeting (Sec. 1255);
- To summon the general meeting in order to approve the balance sheet and/or to approve the report of the liquidation (Sec. 1256 CCC);
- To file a report every 3 months on the progress of the liquidation and deposit that report at the Registration Office, showing the situation of the accounts of the liquidation. Such report shall be open gratuitously for inspection to the shareholders or creditors (Sec. 1267 CCC);
- To summon a shareholders' meeting at the end of every year from the beginning of the liquidation and lay before this meeting a report of his activities and detailed account of the situation, if the liquidation takes more than one year (Sec. 1268 CCC);
- As soon as the company liquidation process is completed, to provide an account of the liquidation showing how the liquidation has been conducted and the property of the company has been disposed of, as soon as the company liquidation process is finished. The liquidator shall summon a general meeting for the purpose of laying before it the account and give an explanation;
- To pay all costs, charges and expenses properly incurred in the liquidation in preference to other debts (Sec. 1263 CCC). The assets of the company may be divided among the shareholders, if they are not required for performing all the obligations of the company (Sec. 1269 CCC).;
- After the accounts are finally approved, to register the proceedings of the meeting with the Company Registrar within 14 days. Such registration is called an application for dissolution of a company and considered as the end of the liquidation process. The company ceases to exist as a legal entity.

IV. Liquidation and Taxes

Upon submitting an application for dissolution, the Revenue Department, as the creditor for tax liability, is entitled to object the dissolution of the company if it believes that the company has any outstanding tax liability.

The company must return the company's taxpayer card to the Revenue Department within 60 days from the date at which the Ministry of Commerce accepts the registration of the dissolution (the "dissolution date"). In addition, if the company is registered for VAT, it must also give notice of the cessation of its business and return the VAT registration certificate to the Revenue Department within 15 days from the dissolution date (sec. 85/15 Revenue Code).

The corporate income tax return for the period ending on the dissolution date must be filed within 150 days with the Revenue Department together with the adopted and audited financial statements for the period.

Under the Revenue Code, the Revenue Department has the power to investigate tax returns for a period of two years. It can extend the investigation to a period of up to five years in case there is any evidence or suspicion of tax evasion. The scope of examination will depend on the facts and how well the company has complied with the tax regulations in the past.

In case the company had controversies with the tax authorities during the last years, it should consider leaving the company dormant for a period of at least two years before entering into the dissolution process, so that the tax prescription period of two years expires. Even though the company is dormant, it still has the duty to file corporate income tax returns, have the accounts audited annually, and submit the audited financial statements to the Ministry of Commerce.

The company must register the dissolution with the Revenue Department within 15 days for VAT purposes. In case the entire business and assets are not transferred, the VAT on outstanding assets is due on the dissolution date even if the assets have not yet been sold or transferred.

In case there is any outstanding input tax not yet due on the dissolution date, the company cannot claim such input tax invoice before receiving the related tax invoices from its suppliers. In addition, the company cannot claim the input tax received after the dissolution, because it is no longer an entrepreneur for VAT purposes. Therefore,

the company should arrange to receive all outstanding input tax before the dissolution date.

V. Liquidation and Severance Payments

The dissolution has to be considered as a termination of employment for which the employees must be compensated according to Sec. 118 of the Labour Protection Act. The amount of severance payment is dependent upon the time the employee has been working for the company. The rates are as follows:

<u>Years of service in the company</u>	<u>Severance pay</u>
More than 120 days but less than 1 year:	at least 30 day wages
1 year or more but less than 3 years:	at least 90 day wages
3 years or more but less than 6 years:	at least 180 day wages
6 years or more but less than 10 years:	at least 240 day wages
10 years or more:	at least 300 day wages

The period of employment includes holidays, leave days and days on which the employer has been given order to stop working. The payment is calculated at the average wage rate during the last 30 days before termination. In addition to this, the employer must pay remuneration in lieu of the unused annual leave to which the employee is entitled.

The company must withhold personal income tax for its employees. The severance payment and remuneration for unused annual leave

must be included in the computation of the personal income withholding tax.

V. Liquidation and Liability of Directors

According to Sec. 1169 CCC, claims against the directors for compensation for injury caused by them to the company may be entered by the company or by any of the

shareholders. Such claims may also be raised by the creditors of the company in so far as their claims against the company remain unsatisfied. However, these claims cannot be asserted after the liquidation of the company is completed.

Timetable of a Liquidation

Timing	Place	Requirement
1. Prior to the desired date of dissolution.	Company's Office	Special shareholders' resolution, passed by two successive shareholders meetings, held not less than 14 days apart, to dissolve the company and appoint the liquidator(s)
2. Within 14 days from the date of dissolution approved by the company	Company Registrar, Ministry of Commerce	Liquidator to register: - the fact of dissolution of the company, - the name of the liquidator and registrar will issue confirmatory affidavit
3. As soon as possible after obtaining Commercial Registrar's affidavit (see item 2 above)	Company's Office	Liquidator to prepare a balance sheet to be audited Convene general shareholders' meeting to approve balance sheet, confirm appointment of liquidator(s)
4. Within 14 days from date of dissolution approved by the company	In a local newspaper	Notify the public by two successive advertisements that its creditors must apply to the liquidator for payment of any outstanding obligations
5. Within 14 days from date of dissolution approved by the company	Registered letter of each creditor whose names appear in the books or documents of the company	Notify the creditors that they must apply to the liquidator for payment of any outstanding obligations
6. Within 15 days from date of dissolution approved by the company	Revenue Department	Notify the Director General of the dissolution Submit VAT registration certificate or specific business tax certificate, as the case may be, for cancellation
7. Within 60 days from date of issue of affidavit by Commercial Registration Department approving dissolution	Revenue Department	File an application Submit original taxpayer ID card for cancellation

8. Within 15 days from date of issue of affidavit by Commercial Registration Department approving dissolution	Revenue Department	Inform Revenue Department of the company's dissolution
9. 3 months after date of dissolution approved by the company, and thereafter at successive 3-month intervals	Company Registrar, Ministry of Commerce	Liquidator to file reports regarding the liquidation progress
10. Within 150 days from the date of issue of affidavit by Commercial Registration Department approving dissolution	Revenue Department	File a final corporate income tax return
11. As soon as possible after completion of liquidation	Company's Office	Liquidator prepares full report of conduct of liquidation and disposal of the company's property Convene shareholders' meeting to present report
12. Within 14 days of shareholders' meeting referred to in item 11 above	Company Registrar, Ministry of Commerce	Register minutes of shareholders' meeting referred to in item 11 above
13. Within 14 days of shareholders' meeting referred to in item 11 above	Company Registrar, Ministry of Commerce	Deposit all corporate books, accounts and documents

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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