

Memorandum

October 1, 2008

Re: New MOC Policy Prohibits Use of Director's Proxies and Circular Board Resolutions

The Department of Business Development issued Notification re Registration of the Articles of Association of Limited Companies under the Civil and Commercial Code on September 10, 2008, highlights of which are as follows:

1. Articles of Association of a company may not provide that a director may appoint proxy to attend meetings of the Board to constitute as quorum and to vote.

The rationale given is that such provision leads to avoidance of compliance with the provisions of law.

2. Articles of Association of a company may not provide for the adoption of board resolutions by way of circular board resolutions.

The rationale given is that the provisions of Sections 1160, 1161, 1162 and 1163 of the Civil and Commercial Code have provided for the procedure for directors meeting so that each director can exchange ideas concerning operations of the company prior to adoption of any resolutions. Although Section 1158 provides that the company may otherwise stipulate director powers in its Articles of Association, it does not mean that the company can stipulate in its Articles of Association that a directors meeting is not required. Such provision leads to avoidance of compliance with the provisions of law.

- 3) Although there is no revocation of registration of such Articles, a company that has registered such Articles is no longer able to rely on them.

Companies that have registered Articles of Association of a nature described in 1 and 2 above are requested to give cooperation by amending their Articles of Association to comply with the law.

An English translation of Notification of Department of Business Department Re : Registration of articles of Association of Limited Companies under the Civil and Commercial Code dated September 10, 2008 is attached herewith.

(Translation)

[GARUDA]

**Notification of Department of Business Development
Re: Registration of Articles of Association of Limited Companies
under the Civil and Commercial Code**

Reference is made to the acceptance by Department of Business Development for registration of articles of association of limited companies with provisions allowing a director to assign another person as his proxy to attend, to form the quorum and to vote at the company's board of directors' meetings, and the registration of articles of association of limited companies providing that the board of directors may adopt a resolution by way of a circular resolution without holding a board of directors meeting.

Thereafter, the Supreme Court issued a decision No. 3362/2532, which may be summarized that the qualifications of the company's director are specific to the person and that the director shall do business by himself, meaning that he cannot assign another person to act on his behalf as a director. A similar ruling (Completed Matter No. 75/2536) regarding articles of association of a public limited company was issued by the Council of State. In addition, the ruling of the Council of State also ruled that the articles of association providing that the board of directors may adopt a resolution by way of a circular resolution without holding a board of directors meeting cannot be accepted for registration, because it results in avoidance and non-compliance with the provisions of law.

Requests for a ruling then came from concerned persons as to whether the articles of association of a limited company providing that a director may assign another person as his proxy to attend, to form the quorum and to vote at the company's board of directors meeting, and the articles of association of a limited company providing that the board of directors may adopt a resolution by way of a circular resolution without holding a board of directors meeting, can continue to be registrable, and whether a limited company having registered its articles of association in such manner can continue to adhere to said articles of association.

Department of Business Development referred said issue to its Legal Advisory Committee who concluded that:

- 1. A limited company may not provide in its articles of association allowing its director to assign another person as a proxy to attend, to form the quorum and to vote on his behalf at its board of directors meetings.**

Although the Civil and Commercial Code, as a private law, has as its basic principle the declaration of intention of the contractual parties, such declaration of intention must be within the scope of the law. Although Section 1158 of the Civil and Commercial Code provides that a limited company may have provisions in its articles of association different from those provided in Section 1159 through Section 1164, a company is still required to prescribe its articles of association within the

scope of the law, that is it may not prescribe the articles of association with objects in contrary to law or public order and good morals of the people. The articles of association prescribed in such manner will result in the avoidance and non-compliance with the provisions of law in respect of the powers, duties and responsibilities of the directors. Similarly, with respect to the qualifications of the directors, in view of the provisions of law relating to civil and criminal liabilities of directors, as well as the quorum requirement, they are deemed specific to the persons. Therefore, a company may not prescribe its articles of association in such manner as mentioned above.

2. **A limited company may not provide in its articles of association allowing a circular resolution of the board of directors to be adopted without holding a board of directors meeting.**

Procedures for meetings of the board of directors are provided in Sections 1160, 1161, 1162 and 1163 of the Civil and Commercial Code so that each board member may attend and exchange views relating to the company's business operation prior to adopting a resolution on any matter. Although Section 1158 provides that a company may provide in its articles of association regarding the powers of directors otherwise, it does not mean that a company may provide in its articles of association that no board of directors meeting is required, as the prescription of the articles of association in such manner will constitute an avoidance and non-compliance with the provisions of law under Sections 1160, 1161, 1162 and 1163.

3. **Where a limited company has registered its articles of association in the manner described in Clause 1 and Clause 2, although the registration of said articles of association has not been revoked, a company may no longer adhere to such articles of association.**

Department of Business Development hereby issues this notification and request that any company having registered its articles of association in the manner described in Clause 1 and Clause 2 proceed to register the amendment thereto.

Given on this 10th day of September, 2008

- Signature -

(Mrs. Phanit Lortrakul)

Deputy Director-General

Acting on behalf of the Director-General

Department of Business Development