

Legal Update

LIVING WILL FOR "RIGHT TO DIE"

The Ministerial Regulation issued under the National Health Act B.E. 2550 (A.D. 2007) prescribing criteria and procedures in respect of 'living will' has come into force since 20 May 2011. The provision in respect of the 'living will' for the 'right to die' states in Section 12 of the said Act that persons shall be entitled to make their intention in advance in form of the 'living will' of not wishing to receive further medication that would be made for extending their lives from terminal illness only. Certain criteria and procedures thereof are summarized as follows:

A living will shall be made clearly with the contents / information that shall be sufficient to perform any acts in line with such intention and in accordance with the guidelines as stated in the said Ministerial Regulation, including but not limited to the followings:

- The completed personal information of the intended person, i.e. identification card number, name and surname, contacted address and details, as well as his/her signature / fingerprint;
- Date/month/year of making the living will;
- Details and signatures of witnesses and their relationship with the intended person (e.g. close persons, relatives or nurses); and
- Specifying the methods of medical treatment that the intended person does not wish to be used during his/her terminal illness, such as cardiopulmonary resuscitation (CPR), or intention to die in peace in his/her own home.

The intended person may cancel, revoke or amend the living will at any time and it should be delivered to his/her close person for further proceeding. The living will may not be limited to only in writing or specific form, but also include VDO recording or oral intention, as the case may be.

In performing acts to be in line with the intention under the living will, in case the patient is in full of consciousness a doctor would have to advise a patient of his/ her health condition as evaluated by a doctor that his/her health condition is under 'terminally ill'. The 'terminal illness' or 'terminally ill' means an illness which is incurable or seriously injured and such condition shall bring the patient to the unavoidable death soon or to permanently lose duty of the brain that would cause the lack of consciousness and communication capability.

Much of the controversy has swirled around the mistaken belief that legal provision for a living will could pave the way for mercy-killing, assisted suicide or euthanasia. Another fear is that vulnerable patients could be coerced, pressured and exploited into agreement to end their lives for the crime. The living will is a sensitive issue. It is possible that when a doctor negotiates for a decision to patient's relatives, such doctor might be looked in negative. Therefore, such should be taken more time for doctors to have a conference in the hospitals in order to create the most understanding to both doctors and patients.

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REVISION TO THE REGULATIONS OF MARKET DOMINANCE

The Commerce Ministry's Trade Competition Committee ("**Committee**") has agreed to revise market dominance regulations to increase enforcement efficiency against traders for monopolizing the market through unfair practices. The Committee will finalize other details of the Trade Competition Act B.E. 2542 (A.D. 1999) ("**TCA**") prior to an announcement of such revision approximately in June 2011.

According to the current regulations under Section 3 of TCA, the market dominance is defined as (i) any entrepreneur having a market share in the previous year of at least 50 percent and annual sales of at least Baht one billion or (ii) any first three entrepreneurs in certain markets having an aggregated market share of at least 75% and annual sales of at least Baht one billion each, except any entrepreneur having a market share less than 10% or previous annual sales of less than Baht one billion. Any entrepreneurs having market dominance are prohibited to fix the sale price, unfair sale, unfair conditions to customers and to suspend, reduce, limit the production lower than market demand and interfere with other business operations without reasonable cause, which shall be subject to a punishment of imprisonment and fine under the TCA.

The Committee has considered revising the said market dominance regulations by focusing on reducing the sale revenue cap from Baht one billion to Baht 500 million in order to increase efficiency of investigation into a market leader suspected of conducting unfair practices to boost sales. The revised regulations on market dominance shall be applied to all current 80 businesses that have still been monitored in accordance with the Act.

The meeting has also discussed whether TCA shall include the subsidiary or affiliated company that operates the same kinds of business as its parent company in scrutiny for being considered under the market dominance regulations as one business unit. According to the current regulations under TCA, the market dominance regulations shall apply separately against each entrepreneur regardless of whether they are the same group of companies or not. Currently, certain large companies operating in certain businesses, e.g. agricultural and sugar businesses, have established many subsidiary or affiliated companies to operate the same kind of businesses in order to reduce / avoid the risk of being considered unfair market dominance under the current regulations. However, in some foreign countries, the market dominance regulations shall apply against all companies in the same group, including subsidiary and affiliated companies, operating the same kind of businesses, to be collectively considered altogether as one unit.

THAI IDENTIFICATION CARD FOR CHILDREN

The Identification Card Act (No.3) B.E.2554 has been announced in the Government Gazette since 11 May 2011 and shall be effective on and from 9 July 2011.

Due to the fact that the government has a policy for Thai nationals to have and present their identification cards when receiving the public services, the criteria and procedure for issuing identification card has then been revised to be in accordance with such government policy to bring technology for providing services to Thai national people through identification card.

Certain significant amendment is that "Any Thai national with the age from seven years to not exceeding 70 years and having name in the house registration must have an identification card" (currently, only Thai nationals with the ages during 15 to 70 years are required to apply for identification cards). Therefore, upon the enactment of the amended Act, children with the age from 7 years old shall also be required to apply for identification cards accordingly.

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