

## รายการอ้างอิง

### ภาษาไทย

- คณิน สุบิน, คณะกรรมการกำกับดูแลบริษัท. วิทยานิพนธ์ปริญญาามหาบัณฑิต ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2543.
- จิรจิตร ช่วยศรียัง. บริษัทจำกัดที่มีผู้ถือหุ้นคนเดียว. วิทยานิพนธ์ปริญญาามหาบัณฑิต ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2548.
- ฉัตรทิพย์ ตันตพระศาสน์. มาตรการทางกฎหมายในการคุ้มครองผู้ถือหุ้น. วิทยานิพนธ์ปริญญาามหาบัณฑิต ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2525.
- ชัยสิทธิ์ ตราชูธรรม. คำอธิบายกฎหมายภาษีอากร เล่ม 2 (ภาษีเงินได้นิติบุคคล). จังหวัดนนทบุรี : สถาบัน T. Training Center, 2545.
- ณัฐพันธ์ เขจรันนทน์. กลยุทธ์การเปลี่ยนแปลงและพัฒนาองค์กร. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : บริษัท เอ็กซ์เปอร์เน็ท จำกัด, มีนาคม 2545.
- ตลาดหลักทรัพย์แห่งประเทศไทย. บทบาท หน้าที่ และความรับผิดชอบของคณะกรรมการบริษัทจดทะเบียน. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : บริษัท บุญศิริการพิมพ์ จำกัด, พฤศจิกายน 2540.
- ทิพย์ชนก รัตโนสถ. การควบรวมและการแยกส่วนบริษัทในบริบทของกฎหมายฝรั่งเศส. วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 28, 4 (ธันวาคม 2541): 726-738.
- ธงชัย จันทรวีรัช. หลักกฎหมายหุ้นส่วนบริษัท. พิมพ์ครั้งที่ 7. กรุงเทพมหานคร : สำนักพิมพ์วิญญูชน, พฤศจิกายน 2546.
- ปาลีรัฐ ศรีวรรณพฤกษ์. การคุ้มครองผู้ถือหุ้นข้างน้อยตามพระราชบัญญัติบริษัทมหาชน(ใหม่). วิทยานิพนธ์ปริญญาามหาบัณฑิต ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2545.

ปิติพงศ์ อาชามงคล. ขอบเขต ผล และการบังคับใช้สัญญาผู้ถือหุ้น. วิทยานิพนธ์ปริญญาโทบริหารธุรกิจ สาขาวิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2544.

ฝ่ายกำกับตลาด ตลาดหลักทรัพย์แห่งประเทศไทย. การซื้อหุ้นคืน. วารสารตลาดหลักทรัพย์ 5,10 (มีนาคม 2545): 8-11.

พิเศษ เสตเสถียร. กฎหมายหลักทรัพย์และตลาดหลักทรัพย์. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สำนักพิมพ์นิติธรรม, เมษายน 2537.

พิเศษ เสตเสถียร. จากบริษัทจำกัดสู่บริษัทมหาชน. พิมพ์ครั้งที่ 2. กรุงเทพมหานคร : บริษัทพิมพ์ดี จำกัด, สิงหาคม 2536.

พิเศษ เสตเสถียร. หลักกฎหมายบริษัทมหาชนจำกัด. พิมพ์ครั้งที่ 7. กรุงเทพมหานคร : สำนักพิมพ์นิติธรรม, พฤษภาคม 2546.

พินิจ ทิพย์มณี. หลักกฎหมายบริษัทจำกัด. พิมพ์ครั้งที่ 3. กรุงเทพมหานคร : สำนักพิมพ์วิญญูชน, พฤศจิกายน 2547.

เพ็ญพิมล อรุณสุรัตน์. บริษัทได้มาซึ่งหุ้นของตนเอง:เพื่อรักษาระดับราคาหุ้น. วิทยานิพนธ์ปริญญาโทบริหารธุรกิจ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, พ.ศ.2546.

ภาสกร ชุณหะวัณ. คำอธิบายกฎหมายหุ้นส่วนและบริษัท. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สำนักพิมพ์นิติบรรณการ, 2539.

ยินดี วิชชุโอภาส. อำนาจที่ประชุมผู้ถือหุ้นในการควบคุมการดำเนินงานของบริษัท. วิทยานิพนธ์ปริญญาโทบริหารธุรกิจ คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, พ.ศ.2543.

ลัดดาวรรณ เอกชนนิยม. ข้อพิจารณาเบื้องต้นเกี่ยวกับการซื้อหุ้นคืนโดยบริษัทผู้ถือหุ้น. วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 29, 3 (กันยายน 2542): 390-412.

- วรวรรณ วงศ์ปัญญา. ปัญหาเกี่ยวกับเหตุในการเลิกบริษัทโดยอาศัยคำสั่งศาล. วิทยานิพนธ์ปริญญา  
มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, พ.ศ.2545.
- วิจิตรา (ฟุ้งลัดดา) วิเชียรชม. กฎหมายคุ้มครองแรงงาน. พิมพ์ครั้งที่ 4. กรุงเทพมหานคร : บริษัท  
สำนักพิมพ์วิญญูชน จำกัด, มิถุนายน 2544.
- วิจิตรา (ฟุ้งลัดดา) วิเชียรชม. สัญญาจ้างแรงงาน. พิมพ์ครั้งที่ 2. กรุงเทพมหานคร : บริษัท สำนักพิมพ์  
วิญญูชน จำกัด, กุมภาพันธ์ 2543.
- ศรีณรงค์ ชูศรีนวล. การปรับเปลี่ยนองค์กร, พิมพ์ครั้งที่ 2. กรุงเทพมหานคร : บริษัท สำนักพิมพ์ชุม  
จำกัด, กุมภาพันธ์ 2542.
- สถาบันพัฒนาความรู้ตลาดทุน (TSI) ตลาดหลักทรัพย์แห่งประเทศไทย. หลักสูตรผู้ให้คำแนะนำการ  
ลงทุนในตลาดหลักทรัพย์. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : ตลาดหลักทรัพย์แห่งประเทศไทย,  
2545.
- สถาบันพัฒนาบุคลากรธุรกิจหลักทรัพย์ (TSI) ตลาดหลักทรัพย์แห่งประเทศไทย. หลักสูตรความรู้  
พื้นฐานเกี่ยวกับตลาดเงินและตลาดทุน. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : หจก.สุขุมวิท มีเดีย  
, พฤษภาคม 2546.
- สมศักดิ์ นวตระกูลพิสุทธิ. การใช้สิทธิออกเสียงของผู้ถือหุ้นตามกฎหมายฝรั่งเศส. วารสารนิติศาสตร์  
มหาวิทยาลัยธรรมศาสตร์ 29, 1 (มีนาคม 2542): 93-110.
- สมศักดิ์ นวตระกูลพิสุทธิ. บริษัทจำกัดที่มีผู้ถือหุ้นเพียงคนเดียวตามกฎหมายฝรั่งเศส. วารสาร  
นิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 31, 2 (มิถุนายน 2544): 384-398.
- สมศักดิ์ นวตระกูลพิสุทธิ. บริษัทมหาชนตามโครงสร้างแบบคานอำนาจตามกฎหมายฝรั่งเศส. วารสาร  
นิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 33, 1 (มีนาคม 2546): 127-151.
- สมศักดิ์ นวตระกูลพิสุทธิ. หุ้นบริมสิทธิและสิทธิของผู้ถือหุ้นตามกฎหมายฝรั่งเศส. วารสารกฎหมาย  
ปกครอง 20, 3 (ธันวาคม 2544): 90-110.

สหัส สิงหวิริยะ. คำอธิบายกฎหมายว่าด้วยบริษัทมหาชนจำกัด. พิมพ์ครั้งที่ 1 กรุงเทพมหานคร : สำนักพิมพ์นิติบรรณการ, เมษายน 2546.

สันติ กิระนันท์. การลงทุนในตราสารหนี้. พิมพ์ครั้งที่ 3. กรุงเทพมหานคร : บริษัท บุญศิริการพิมพ์ จำกัด, พฤษภาคม 2548.

สุดา วิศรุตพิชญ์, "สรุปสาระสำคัญที่แตกต่างกันของบริษัทมหาชน จำกัดตามพ.ร.บ.บริษัทมหาชน จำกัด พ.ศ.2535 และพ.ร.บ.บริษัทมหาชน (ฉบับที่ 2) พ.ศ.2544กับบริษัท จำกัดตามประมวลกฎหมายแพ่งและพาณิชย์ (ในกรณีที่บริษัทได้จัดตั้งขึ้นแล้ว)," เอกสารประกอบการบรรยายวิชาการกฎหมายลักษณะหุ้นส่วน-บริษัท คณะนิติศาสตร์มหาวิทยาลัยธรรมศาสตร์. (เอกสารไม่ตีพิมพ์เผยแพร่)

สุธาบดี สัตตบุศย์. กฎหมายสำหรับผู้ถือหุ้นและกรรมการบริษัท มหาชน จำกัด. พิมพ์ครั้งที่ 1 กรุงเทพมหานคร : บริษัท 21 เซ็นจูรี่ จำกัด, มีนาคม 2537.

สุมาลี วาทีตาพร. การได้มาซึ่งหุ้นในบริษัทของตนเอง. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต ภาควิชานิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, พ.ศ.2541.

สุรศักดิ์ วาจาสิทธิ์ และ สหชน รัตนไพจิตร. ย่อหลักกฎหมายแพ่งและพาณิชย์ว่าด้วยหุ้นส่วนบริษัท. พิมพ์ครั้งที่ 9. กรุงเทพมหานคร : สำนักพิมพ์นิติธรรม, ธันวาคม 2543.

สุรเชษฐ ชีรวินิจ, พ.ศ.อ. กฎหมายหลักทรัพย์และตลาดหลักทรัพย์. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : บริษัท คอมฟอร์ม จำกัด, สิงหาคม 2547.

สำนักงานคณะกรรมการกฤษฎีกา. "บทบาทของสภาแห่งรัฐฝรั่งเศสในฐานะที่ปรึกษากฎหมายของรัฐบาล" ข้อมูลจาก <http://www.krisdika.go.th/pdfPage.jsp?type=act&actCode=91> (กรกฎาคม, 2 2550)

โสภณ รัตนากร. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยหุ้นส่วนและบริษัท. พิมพ์ครั้งที่ 10. กรุงเทพมหานคร : สำนักพิมพ์นิติธรรม, พฤศจิกายน 2548..

เสาวนีย์ อัครโรจน์. การคุ้มครองสิทธิของผู้ถือหุ้นฝ่ายข้างน้อยในบริษัท เอกชน จำกัด. วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 20, 2 (เมษายน 2533): 201-228.

เสาวนีย์ อัครโรจน์. การฟ้องคดีของผู้ถือหุ้นฝ่ายข้างน้อยในกฎหมายบริษัท. วารสารกฎหมายสุโขทัย ธรรมาธิราช 9, 2 (ธันวาคม 2540): 37-47.

## ภาษาอังกฤษ

Andrew Hicks and S.H.Goo. Cases and Materials on Company Law. Fourth edition. London : Blackstone Press Limited, 2001.

Autorité Des Marchés Financiers. "What we do" Available from : [http://www.amf-france.org/affiche\\_page.asp?urldoc=lesmissionsamf.htm&lang=en&Id\\_Tab=0](http://www.amf-france.org/affiche_page.asp?urldoc=lesmissionsamf.htm&lang=en&Id_Tab=0)  
(May, 28 2007)

Ben Pettet. Company Law. second edition. Harlow : Pearson Education Limited, 2005.

Brian R. Cheffins. Company Law : Theory, Structure and Operation. United States : Oxford University Press, 1997.

Brenda Hannigan. Company Law. London : Clays Ltd, 2003.

"Chapter 9 Business entities" Available from : <http://e-fpo.fpo.go.th/e-fiscal/PWGuides/individualguides/DOCS/wcd00011/wcd01139.htm> (April, 20 2007)

Darek French. Blackstone's Statutes on Company Law. Sixth edition. United States : Oxford University Press, 2002.

Douglas Smith. Company Law. Woburn : Butterworth-Heinemann, 1999.

- Geoffrey Morse, Stephen Girvin, Richard Morris, Sandra Frisby and Alastair Hudson, Charlesworth Company Law. Seventeenth edition. London : Sweet&Maxwell, 2005.
- Janet Dine. Company Law. Fifth edition. New York : Palgrave Macmillan, 2005.
- Janice Dean. Directing Public Companies : Company Law and the Stakeholder Society. London : Cavendish Publishing Limited, 2001.
- Jean Jacques du Plessis, James McConvill and Mirko Bagaric. Principles of Contemporary Corporate Governance. New York : Cambridge University Press, 2005.
- Jean – Pierre Le Gall and Paul Morel. French Company Law. Second edition. London : Longman Group Uk Ltd, 1992.
- Julian Maitland-Walker. Guide to European Company Laws. Second edition. London : Sweet&Maxwell, 1997. .
- J.H.Farrar, N.E.Furey and B.M.Hannigan. Farrar's Company Law. Third Edition. London : Butterworths, 1991.
- Lex Fori International Lawyers. "Concepts of French Law Relating to Commercial Companies" Available from :  
[http://www.lexfori.net/concepts\\_of\\_french\\_law\\_relatig\\_.htm](http://www.lexfori.net/concepts_of_french_law_relatig_.htm) (April, 20 2007)
- Lefèvre Pelletier & associés. "Doing Business in France" Available from :  
<http://www.lpalaw.com.fr> (April, 20 2007)
- Paul L. Davies. Gower's Principles of Modern Company Law. Sixth edition. London : Sweet&Maxwell, 1997.



Pieere Bézard and Jean-Jacques Caussain. "French Perspectives" Available From :  
<http://www.creda.ccip.fr/colloques/pdf/1999-droit-Europe-%20XXIe/droit-societes-actes-GB.pdf> (July, 22 2007)

Stephen Griffin. Company Law Fundamental Principles. Second edition. London : Pitman Publishing, 1996.

Stephen W. Mayson, Derek French and Christopher L. Ryan. Company Law. Nineteenth edition. United States : Oxford University Press, 2002.

Susan Barber. Company Law. Third edition. London : Old Bailey Press, 2001.

Thieffry Associates. "French Legal Structures : Incorporate or not ?" Available from :  
<http://www.thieffry.com/doingbusiness/corporations.htm> (April, 20 2007)

Wikipedia, "Conseil d'Etat" Available from :  
[http://en.wikipedia.org/wiki/Conseil\\_d'%C3%89tat](http://en.wikipedia.org/wiki/Conseil_d'%C3%89tat) (June, 28 2007)

ภาคผนวก



ภาคผนวก ก.

- ร่างพระราชบัญญัติบริษัทมหาชนจำกัด (ฉบับที่..) พ.ศ. ....



(3) บริษัทต้องจัดให้มีผู้ซื้อหรือซื้อคืนซึ่งหลักทรัพย์ที่อาจแปลงสภาพเป็นหุ้นของบริษัททั้งหมด โดยการจัดให้มีผู้ซื้อและการซื้อคืนให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในกฎกระทรวง

(4) กรณีที่มีมติให้แปรสภาพตาม (1) แล้ว แต่มีผู้ถือหุ้นของบริษัทคัดค้าน บริษัทต้องจัดให้มีผู้ถือหุ้นของผู้ถือหุ้นดังกล่าวหรือซื้อหุ้นของผู้ถือหุ้นนั้นคืน การจัดให้มีผู้ถือหุ้นและการซื้อหุ้นคืนให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในกฎกระทรวง

(5) บริษัทจะต้องไม่มีหลักทรัพย์ที่อาจแปลงสภาพเป็นหุ้นได้ค้างอยู่ และ

(6) บริษัทได้จดทะเบียนและดำเนินการในรูปของบริษัทมาแล้วไม่น้อยกว่า 2 ปี

การแปรสภาพเป็นบริษัทเอกชนตามวรรคหนึ่งให้นำบทบัญญัติในห้ามาตรา 181 มาตรา 182 มาตรา 183 มาตรา 184 และมาตรา 185 มาใช้บังคับโดยอนุโลม"

**ภาคผนวก ข.**

- COMPANIES ACT 2006 PART 7 : RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS
- FRENCH COMMERCIAL CODE SECTION VI : CONVERSION OF PUBLIC LIMITED COMPANY

## COMPANIES ACT 2006



## PART 7

## RE-REGISTRATION AS A MEANS OF ALTERING A COMPANY'S STATUS

Introductory**Section 89** Alteration of status by re-registration

A company may by re-registration under this Part alter its status—

- (a) from a private company to a public company (see sections 90 to 96);
- (b) from a public company to a private company (see sections 97 to 101);
- (c) from a private limited company to an unlimited company (see sections 102 to 104);
- (d) from an unlimited private company to a limited company (see sections 105 to 108);
- (e) from a public company to an unlimited private company (see sections 109 to 111).

Private company becoming public**Section 90** Re-registration of private company as public

(1) A private company (whether limited or unlimited) may be re-registered as a public company limited by shares if—

- (a) a special resolution that it should be so re-registered is passed,
- (b) the conditions specified below are met, and
- (c) an application for re-registration is delivered to the registrar in accordance with section 94, together with—
  - (i) the other documents required by that section, and
  - (ii) a statement of compliance.

(2) The conditions are—

- (a) that the company has a share capital;
- (b) that the requirements of section 91 are met as regards its share capital;
- (c) that the requirements of section 92 are met as regards its net assets;
- (d) if section 93 applies (recent allotment of shares for non-cash consideration), that the requirements of that section are met; and
- (e) that the company has not previously been re-registered as unlimited.

(3) The company must make such changes—

- (a) in its name, and
- (b) in its articles, as are necessary in connection with its becoming a public company.

(4) If the company is unlimited it must also make such changes in its articles as are necessary in connection with its becoming a company limited by shares.

#### **Section 91 Requirements as to share capital**

(1) The following requirements must be met at the time the special resolution is passed that the company should be re-registered as a public company—

- (a) the nominal value of the company's allotted share capital must be not less than the authorised minimum;
- (b) each of the company's allotted shares must be paid up at least as to one quarter of the nominal value of that share and the whole of any premium on it;
- (c) if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or another should do work or perform services (whether for the company or any other person), the undertaking must have been performed or otherwise discharged;
- (d) if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash, and the consideration for the allotment consists of or includes an undertaking to the company (other than one to which paragraph (c) applies), then either—
  - (i) the undertaking must have been performed or otherwise discharged, or



- (ii) there must be a contract between the company and some person pursuant to which the undertaking is to be performed within five years from the time the special resolution is passed.
- (2) For the purpose of determining whether the requirements in subsection (1)(b),(c) and (d) are met, the following may be disregarded—
- (a) shares allotted—
    - (i) before 22nd June 1982 in the case of a company then registered in Great Britain, or
    - (ii) before 31st December 1984 in the case of a company then registered in Northern Ireland;
  - (b) shares allotted in pursuance of an employees' share scheme by reason of which the company would, but for this subsection, be precluded under subsection (1)(b) (but not otherwise) from being re-registered as a public company.
- (3) No more than one-tenth of the nominal value of the company's allotted share capital is to be disregarded under subsection (2)(a). For this purpose the allotted share capital is treated as not including shares disregarded under subsection (2)(b).
- (4) Shares disregarded under subsection (2) are treated as not forming part of the allotted share capital for the purposes of subsection (1)(a).
- (5) A company must not be re-registered as a public company if it appears to the registrar that—
- (a) the company has resolved to reduce its share capital,
  - (b) the reduction—
    - (i) is made under section 626 (reduction in connection with redenomination of share capital),
    - (ii) is supported by a solvency statement in accordance with section 643, or
    - (iii) has been confirmed by an order of the court under section 648, and
  - (c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the authorised minimum.

## Section 92 Requirements as to net assets

- (1) A company applying to re-register as a public company must obtain—
  - (a) a balance sheet prepared as at a date not more than seven months before the date on which the application is delivered to the registrar,
  - (b) an unqualified report by the company's auditor on that balance sheet, and
  - (c) a written statement by the company's auditor that in his opinion at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (2) Between the balance sheet date and the date on which the application for re-registration is delivered to the registrar, there must be no change in the company's financial position that results in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.
- (3) In subsection (1)(b) an "unqualified report" means—
  - (a) if the balance sheet was prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act;
  - (b) if the balance sheet was not prepared for a financial year of the company, a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been prepared for a financial year of the company.
- (4) For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary by reason of that fact.
- (5) For the purposes of subsection (3) a qualification is material unless the auditor states in his report that the matter giving rise to the qualification is not material for the purpose of determining (by reference to the company's balance sheet) whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.
- (6) In this Part "net assets" and "undistributable reserves" have the same meaning as in section 831 (net asset restriction on distributions by public companies).

**Section 93** Recent allotment of shares for non-cash consideration

(1) This section applies where—

- (a) shares are allotted by the company in the period between the date as at which the balance sheet required by section 92 is prepared and the passing of the resolution that the company should re-register as a public company, and
- (b) the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) The registrar shall not entertain an application by the company for re-registration as a public company unless—

- (a) the requirements of section 593(1)(a) and (b) have been complied with (independent valuation of non-cash consideration; valuer's report to company not more than six months before allotment), or
- (b) the allotment is in connection with—
  - (i) a share exchange (see subsections (3) to (5) below), or
  - (ii) a proposed merger with another company (see subsection (6) below).

(3) An allotment is in connection with a share exchange if—

- (a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by—
  - (i) the transfer to the company allotting the shares of shares (or shares of a particular class) in another company, or
  - (ii) the cancellation of shares (or shares of a particular class) in another company; and
- (b) the allotment is open to all the holders of the shares of the other company in question (or, where the arrangement applies only to shares of a particular class, to all the holders of the company's shares of that class) to take part in the arrangement in connection with which the shares are allotted.

(4) In determining whether a person is a holder of shares for the purposes of subsection (3), there shall be disregarded—

- (a) shares held by, or by a nominee of, the company allotting the shares;
- (b) shares held by, or by a nominee of—

- (i) the holding company of the company allotting the shares,
  - (ii) a subsidiary of the company allotting the shares, or
  - (iii) a subsidiary of the holding company of the company allotting the shares.
- (5) It is immaterial, for the purposes of deciding whether an allotment is in connection with a share exchange, whether or not the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares (or shares of a particular class) in the other company.
- (6) There is a proposed merger with another company if one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of its shares or other securities to shareholders of the other (whether or not accompanied by a cash payment). "Another company" includes any body corporate.
- (7) For the purposes of this section—
- (a) the consideration for an allotment does not include any amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and
  - (b) "arrangement" means any agreement, scheme or arrangement, (including an arrangement sanctioned in accordance with—
    - (i) Part 26 of this Act (arrangements and reconstructions), or
    - (ii) section 110 of the Insolvency Act 1986 (c. 45) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (liquidator in winding up accepting shares as consideration for sale of company's property)).

#### **Section 94** Application and accompanying documents

- (1) An application for re-registration as a public company must contain—
- (a) a statement of the company's proposed name on re-registration; and
  - (b) in the case of a company without a secretary, a statement of the company's proposed secretary (see section 95).
- (2) The application must be accompanied by—

- (a) a copy of the special resolution that the company should re-register as a public company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
  - (b) a copy of the company's articles as proposed to be amended;
  - (c) a copy of the balance sheet and other documents referred to in section 92(1);  
and
  - (d) if section 93 applies (recent allotment of shares for non-cash consideration), a copy of the valuation report (if any) under subsection (2)(a) of that section.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a public company have been complied with.
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a public company.

#### **Section 95** Statement of proposed secretary

- (1) The statement of the company's proposed secretary must contain the required particulars of the person who is or the persons who are to be the secretary or joint secretaries of the company.
- (2) The required particulars are the particulars that will be required to be stated in the company's register of secretaries (see sections 277 to 279).
- (3) The statement must also contain a consent by the person named as secretary, or each of the persons named as joint secretaries, to act in the relevant capacity. If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all of them.

#### **Section 96** Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a public company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.



- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
  - (a) the company by virtue of the issue of the certificate becomes a public company,
  - (b) the changes in the company's name and articles take effect, and
  - (c) where the application contained a statement under section 95 (statement of proposed secretary), the person or persons named in the statement as secretary or joint secretary of the company are deemed to have been appointed to that office.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

#### Public company becoming private

#### **Section 97** Re-registration of public company as private limited company

- (1) A public company may be re-registered as a private limited company if—
  - (a) a special resolution that it should be so re-registered is passed,
  - (b) the conditions specified below are met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 100, together with—
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance.
- (2) The conditions are that—
  - (a) where no application under section 98 for cancellation of the resolution has been made—
    - (i) having regard to the number of members who consented to or voted in favour of the resolution, no such application may be made, or



- (ii) the period within which such an application could be made has expired,  
or
  - (b) where such an application has been made—
    - (i) the application has been withdrawn, or
    - (ii) an order has been made confirming the resolution and a copy of that order has been delivered to the registrar.
- (3) The company must make such changes—
- (a) in its name, and
  - (b) in its articles, as are necessary in connection with its becoming a private company limited by shares or, as the case may be, by guarantee.

#### **Section 98** Application to court to cancel resolution

- (1) Where a special resolution by a public company to be re-registered as a private limited company has been passed, an application to the court for the cancellation of the resolution may be made—
- (a) by the holders of not less in the aggregate than 5% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
  - (b) if the company is not limited by shares, by not less than 5% of its members; or
  - (c) by not less than 50 of the company's members; but not by a person who has consented to or voted in favour of the resolution.
- (2) The application must be made within 28 days after the passing of the resolution and may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.
- (3) On the hearing of the application the court shall make an order either cancelling or confirming the resolution.
- (4) The court may—
- (a) make that order on such terms and conditions as it thinks fit,

- (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
  - (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.
- (5) The court's order may, if the court thinks fit—
- (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and
  - (b) make such alteration in the company's articles as may be required in consequence of that provision.
- (6) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments to its articles without the leave of the court.

#### **Section 99 Notice to registrar of court application or order**

- (1) On making an application under section 98 (application to court to cancel resolution) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar. This is without prejudice to any provision of rules of court as to service of notice of the application.
- (2) On being served with notice of any such application, the company must immediately give notice to the registrar.
- (3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.
- (4) If a company fails to comply with subsection (2) or (3) an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**Section 100** Application and accompanying documents

- (1) An application for re-registration as a private limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
  - (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3); and
  - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a private limited company have been complied with.
- (4) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a private limited company.

**Section 101** Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration as a private limited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
  - (a) the company by virtue of the issue of the certificate becomes a private limited company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

## Private limited company becoming unlimited

### Section 102 Re-registration of private limited company as unlimited

- (1) A private limited company may be re-registered as an unlimited company if—
- (a) all the members of the company have assented to its being so reregistered,
  - (b) the condition specified below is met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 103, together with—
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as limited.
- (3) The company must make such changes in its name and its articles—
- (a) as are necessary in connection with its becoming an unlimited company; and
  - (b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.
- (4) For the purposes of this section—
- (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's becoming unlimited; and
  - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes—
- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
  - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

### Section 103 Application and accompanying documents

- (1) An application for re-registration as an unlimited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
  - (a) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company;
  - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited company have been complied with.
- (4) The statement must contain a statement by the directors of the company—
  - (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
  - (b) if any of the members have not authenticated that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited company.

#### **Section 104** Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of a private limited company as an unlimited company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is issued.
- (4) On the issue of the certificate—
  - (a) the company by virtue of the issue of the certificate becomes an unlimited company, and
  - (b) the changes in the company's name and articles take effect.



- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

### Unlimited private company becoming limited

#### **Section 105** Re-registration of unlimited company as limited

- (1) An unlimited company may be re-registered as a private limited company if—
- (a) a special resolution that it should be so re-registered is passed,
  - (b) the condition specified below is met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 106, together with—
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered as unlimited.
- (3) The special resolution must state whether the company is to be limited by shares or by guarantee.
- (4) The company must make such changes—
- (a) in its name, and
  - (b) in its articles, as are necessary in connection with its becoming a company limited by shares or, as the case may be, by guarantee.

#### **Section 106** Application and accompanying documents

- (1) An application for re-registration as a limited company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—
- (a) a copy of the resolution that the company should re-register as a private limited company (unless a copy has already been forwarded to the registrar under Chapter 3 of Part 3);
  - (b) if the company is to be limited by guarantee, a statement of guarantee;



- (c) a copy of the company's articles as proposed to be amended.
- (3) The statement of guarantee required to be delivered in the case of a company that is to be limited by guarantee must state that each member undertakes that, if the company is wound up while he is a member, or within one year after he ceases to be a member, he will contribute to the assets of the company such amount as may be required for—
- (a) payment of the debts and liabilities of the company contracted before he ceases to be a member,
  - (b) payment of the costs, charges and expenses of winding up, and
  - (c) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.
- (4) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as a limited company have been complied with.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as a limited company.

#### **Section 107** Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of an unlimited company as a limited company the registrar is satisfied that the company is entitled to be so reregistered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate—
- (a) the company by virtue of the issue of the certificate becomes a limited company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

**Section 108** Statement of capital required where company already has share capital

- (1) A company which on re-registration under section 107 already has allotted share capital must within 15 days after the re-registration deliver a statement of capital to the registrar.
- (2) This does not apply if the information which would be included in the statement has already been sent to the registrar in—
  - (a) a statement of capital and initial shareholdings (see section 10), or
  - (b) a statement of capital contained in an annual return (see section 856(2)).
- (3) The statement of capital must state with respect to the company's share capital on re-registration—
  - (a) the total number of shares of the company,
  - (b) the aggregate nominal value of those shares,
  - (c) for each class of shares—
    - (i) prescribed particulars of the rights attached to the shares,
    - (ii) the total number of shares of that class, and
    - (iii) the aggregate nominal value of shares of that class, and
  - (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).
- (4) If default is made in complying with this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

**Public company becoming private and unlimited****Section 109** Re-registration of public company as private and unlimited

- (1) A public company limited by shares may be re-registered as an unlimited private company with a share capital if—

- (a) all the members of the company have assented to its being so reregistered,
  - (b) the condition specified below is met, and
  - (c) an application for re-registration is delivered to the registrar in accordance with section 110, together with—
    - (i) the other documents required by that section, and
    - (ii) a statement of compliance.
- (2) The condition is that the company has not previously been re-registered—
- (a) as limited, or
  - (b) as unlimited.
- (3) The company must make such changes—
- (a) in its name, and
  - (b) in its articles, as are necessary in connection with its becoming an unlimited private company.
- (4) For the purposes of this section—
- (a) a trustee in bankruptcy of a member of the company is entitled, to the exclusion of the member, to assent to the company's re-registration; and
  - (b) the personal representative of a deceased member of the company may assent on behalf of the deceased.
- (5) In subsection (4)(a), "a trustee in bankruptcy of a member of the company" includes—
- (a) a permanent trustee or an interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) on the sequestrated estate of a member of the company;
  - (b) a trustee under a protected trustee deed (within the meaning of the Bankruptcy (Scotland) Act 1985) granted by a member of the company.

#### **Section 110** Application and accompanying documents

- (1) An application for re-registration of a public company as an unlimited private company must contain a statement of the company's proposed name on re-registration.
- (2) The application must be accompanied by—

- (a) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company, and
  - (b) a copy of the company's articles as proposed to be amended.
- (3) The statement of compliance required to be delivered together with the application is a statement that the requirements of this Part as to re-registration as an unlimited private company have been complied with.
- (4) The statement must contain a statement by the directors of the company—
- (a) that the persons by whom or on whose behalf the form of assent is authenticated constitute the whole membership of the company, and
  - (b) if any of the members have not authenticated that form themselves; that the directors have taken all reasonable steps to satisfy themselves that each person who authenticated it on behalf of a member was lawfully empowered to do so.
- (5) The registrar may accept the statement of compliance as sufficient evidence that the company is entitled to be re-registered as an unlimited private company.

#### **Section 111** Issue of certificate of incorporation on re-registration

- (1) If on an application for re-registration of a public company as an unlimited private company the registrar is satisfied that the company is entitled to be so re-registered, the company shall be re-registered accordingly.
- (2) The registrar must issue a certificate of incorporation altered to meet the circumstances of the case.
- (3) The certificate must state that it is issued on re-registration and the date on which it is so issued.
- (4) On the issue of the certificate—
- (a) the company by virtue of the issue of the certificate becomes an unlimited private company, and
  - (b) the changes in the company's name and articles take effect.
- (5) The certificate is conclusive evidence that the requirements of this Act as to re-registration have been complied with.

## FRENCH COMMERCIAL CODE

### LIVRE II Des sociétés commerciales et des groupements d'intérêt économique

#### SECTION VI

#### CONVERSION OF PUBLIC LIMITED COMPANIES

##### Article L225-243

Any public limited company may be converted to another legal form of legal person if, at the time of conversion, it has been in existence for at least two years and if it has drawn up balance sheets for its first two financial years and had them approved by the shareholders.

##### Article L225-244

The decision to change the form of a public limited company shall be taken on a report by the company's auditors. The report must certify that the equity capital is at least equal to the amount of the share capital.

The conversion shall be subject, if necessary, to the approval of the meetings of bond holders and holders of dividend or founders' rights.

The decision to change the company's form must be published in such manner as shall be determined by an Order approved by the Conseil d'Etat.

##### Article L225-245

Conversion into a general partnership shall require the agreement of all the partners. If such agreement is obtained, the conditions laid down in Articles L.225-243 and the first sub-paragraph of Article L.225-244 shall not be required.

Conversion into a limited partnership, with or without shares, shall be decided in accordance with the conditions laid down for the amendment of the memorandum and

articles of association and subject to the agreement of all the partners who agree to be active partners.

Conversion into a limited liability company shall be decided in accordance with the conditions laid down for the amendment of the memorandum and articles of association for companies incorporated in that legal form.

#### **Article L225-245-1**

(inserted by Act No. 2005-842 of 26 July 2005 Art. 11 II Official Journal of 27 July 2005)

In the event of a public limited company being converted into a European company, the first paragraph of Article L225-244 is not applicable.

The company draws up a plan to convert the company into a European company. The said plan is filed at the clerk's office of the court having jurisdiction at the place where the company is registered and is published as provided for in a Conseil d'Etat decree.

One or more court-appointed conversion commissioners draw up a report to the converting company's shareholders, under their own responsibility, attesting that the shareholders' equity is at least equivalent to the authorised capital. They are subject to the incompatibilities referred to in Article L822-11.

Conversion into a European company is decided pursuant to the provisions of Articles L225-96 and L225-99.



## ประวัติผู้เขียนวิทยานิพนธ์

นายบุญยวัฒน์ การะเวกพันธุ์ เกิดวันที่ 16 พฤศจิกายน พ.ศ.2524 ณ จังหวัด กรุงเทพมหานคร สำเร็จการศึกษาระดับมัธยมศึกษาที่โรงเรียนอัสสัมชัญ (บางรัก) ปีการศึกษา 2541 ระดับปริญญาตรีนิติศาสตรบัณฑิต (เกียรตินิยมอันดับ 2) คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ปีการศึกษา 2545 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2547 ปัจจุบันรับราชการในตำแหน่งเจ้าหน้าที่คดีพิเศษ สำนักคดีการเงินการธนาคาร กรมสอบสวนคดีพิเศษ

