

# Implementation of Non Profit Companies in Thailand

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## Abstract

This independent study aims for the study intents to focus on the overall background of the non profit companies systems in general movements, compares and contrasts, its development in the United Kingdom. Therefore, to establishment of non profit companies into Thailand. Also, to analyze current status of statutory derivative action under the Civil Code law of Thailand.

The study findings indicate for dissolve the problem of the establishment of non profit companies for adoption into Thailand. While it has appears that the section 1012 of the Civil Code law of Thailand is subject for operation in sharing of profit, it means that the company must be corporate by the operation for making profits. Due to this problem of an operation cannot introduce non profit status into Thailand as usual. The results might be examine from non profit companies in the United Kingdom.

From the study of this problem, it becomes evident on the social issue in particular states including with Thailand. In the United Kingdom, we have found that there are a variety of companies form such as companies limited towards a companies limited by guarantee and a companies limited by share. On the other hand, the Thai companies structures has defined only as a companies limited. So Thailand should be implement on non profit company by followed the recommendation as to revise of section 1012 of Civil and Commercial Code or introduce a sui generis law for conduct non profit companies.

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## **Introduction**

In general, profit companies is the business whose primarily goals is making money or so called profit. It has taken exists primarily to generate a profit which means that to take in more money than it spends. The owners can decide to keep all the profit themselves, or they can spend some or all of it on the business itself. Also, they may decide to share some of it with employees through the use of various types of compensation plans such as employee profit sharing. Profit has describes in the financial benefit realized when revenue generated from a business activities exceeds the expenses, costs, and taxes involved in sustaining the activity. Any profits earned funnel back to business owners, who choose to either pocket the cash or reinvest it back into the business. Profit is calculated as total revenue less total expenses.

Profit means that the money which business pulls in after accounting for all expenses. The primary goal of any business is to earn money, therefore to performance on the business is based on profitability, in its various forms. There are three major types of profit which are gross profit, operating profit, and net profit. All of which can be found on the income statement. Each of the profit type gives analysts more information about a company's performance, especially when it is compared to other competitors and time periods.

The term of non profit is slightly deceiving. Non profit does not mean to no profit. In reality, it means that the companies is not in existence for the sole purpose of making profit. Non profit companies should have known how to effectively earn profitable while they need to know how to recycle those funds back into the companies activities and operations. There are three main categories of non profit companies. They are voluntary organizations, public service contractors (PSCS), people's organizations (POs), and non government organizations (NGOs). The most objective to the non profit companies is totally different from other businesses companies because they are subjects to the social needs and formal legal funding sources. Then the establishment all over their activities by forming social benefits such as hospitals, day care services, universities, religious institutions, arts and cultural activities, recreation programs, and nursing homes.

As non profit companies must have an objectives towards the purpose, ownership, and public support. Non profit companies typically have an activities which focuses on benefit society and whose goal is not primarily for profit called

exempt purposes. Then the income that must never be distributed to any owners but recycled back into the non profit companies. In contrast, profit companies typically seeks to generate income for its founders and employees. Profit has made by sales of products or services, measure the success of profit companies, and those profits are shared with owners, employees, and shareholders. Most importantly, if different members and employees are not working toward the same mission, then the companies will not be on the right path to success. The end goal of a profit companies most often would be maximizing profits and financial benefits for its owners or their shareholders. The end goal of a non profit companies should be ensuring that there are enough profits to continue making a difference activities.

The title of non profit company laws and regulations have been introduced in the continent and the United Kingdom more than three decades. It has adopted into several countries around the world. When the law is adopted, it allow them to establish non profit companies without contradicting to their state laws, this business types has expansion to the society widely. At the same time the size of the non profit sectors and the number of non profit companies are growing up. It is a high profile and high impact community that affect the lives of people throughout the country and the world. For example, in the United States the number of non profit companies have already trebled between 1970 and 1998 and the number of non profit employees grew from 3% of the U.S. labor force in 1960 to 9% in 2000. This growth in size and amount of the non profit sector are a visible pattern of commercialization in the sector.

In the United Kingdom allows non profit companies for establish as a private limited companies, at the same times they can raised in a form of charities. There are three types of private limited companies known as companies limited by share capital, companies limited by guarantee and community interest company (CIC). Almost of the non profit companies are intent to introduce as a companies limited by guarantee which are entity without shareholders; instead it has members who act as guarantors. Registration under companies limited by guarantee require to disclose information such as company name, an address, the name of a director and a guarantor, three trustees and one or more members. It is significant by non profit companies when disclose the information by profit companies because non profit companies needs to inform the predictable amount of funding and the sources they have chosen by their activities, together with the funding amount whereby they have received from the supporter.

In comparison, Thailand still not attends to allow non profit companies for the establishment inside the country or promote into a substantive law. According to section 1012 of the Civil and Commercial Code says that “A contract for the organization of partnership or company is a contract whereby two or more persons agree to united for a common undertaking, with a view of sharing profit the profits which may be derived there from”. It is impossible to establish non profit companies in Thailand because the country does not have this kind of companies, but only business companies which are companies limited. While other countries may provide in variety of an association, foundation, or cooperation in common. So in this research will be recommend guidelines for examine by using sources of non profit company laws in the United Kingdom while we are conforms to develop non profit companies and adopted non profit company laws into Thai government agencies in general provisions.

In conclusion, this research aims to examine all of the structures of non profit company laws by focus on the establishment, capital, objective, management structure, and dissolution throughout an expropriation in other country.

## **Research results**

Since the establishment of the Thai legal forms, the profit companies legal forms meet business needs while non profit companies counterparts meet the social needs. There is no single form successfully comprises both elements for the non profit companies. Although section 1012 in the Civil Code in which has mentioned for the partnerships and companies in Thai companies general provisions that “A contract for the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing profit the profits which may be derived there from”. It means that any of the contracts within their partnership or any companies must be conducted under this law before the establishment the companies into Thailand. So that the words “sharing profit and the profits which may be derived to there from” will struck on non profit companies as its objective when it needs to be perform in a different purpose.

## **1. The Purpose of Non Profit Companies**

In general, non profit companies has been created from a special type of entities. Most of the objectives is not to generate from profit when returned to the companies while operation. This business type is a useful purpose belongs to the social activities. Because of this reason, it will be beneficial to the people who needs expressing on their activities by non profit companies. Especially, to improve a quality of life for others at a community, local, and state. These non profit companies are not dedicated to private or financial gain but to the advancement of the public benefits by taking care of their needs. The one thing that they will have in common is the purpose of generate without making profit. Non profit companies will raise money but they spend it to further their activities, it will not benefit to the donors or the founders.

Since we have got an issues that effected to the social problems, they need a non profit companies approach to deal with increasing rates of suicide, a widening gap between rich and poor, community breakdown and endemic health issues. So when the outcome of non profit companies has been raise against an issues, the activities might get through all those social needs such as the prevention or relief of poverty, the advancement of education, the advancement of religion, the advancement of health or the saving of lives, the advancement of citizenship or community development, the advancement of the arts, culture, heritage, or science, the advancement of amateur sport, and the advancement of human rights, conflict resolution, or reconciliation, or the promotion of religious or racial harmony or equality or diversity.

In the United Kingdom, they have been combined these actual elements together and raise a companies limited by guarantee for monitor their social problems and contribute the laws and regulations indeed. A companies limited by guarantee is subject to any special provisions in the company's articles. The director of the companies have to manage the day to day operations while each of the missions need to be performing for a charitable purposes. It means that the director is a person who takes responsible for the management of the companies which appointed by the company's members.

A key features that emphasize the companies limited by guarantee received most of the income has recognized by the funding source. Since non profit companies are established to meet a specific need in society, the primary funding sources provide financial resources to the companies or agencies for the purpose of meeting the

specific need identified in the company founding documents. As the most objective to the non profit companies is totally different from other businesses type of companies because they are subjects to the social needs and formal legal funding sources. For example, Transparent Hands is one of the most famous non profit companies in United Kingdom. The company funds surgeries of poor patients using a global Crowd funding platform. The platform provides visibility of poor patients and builds a personal and trusted bond between patients and donors while ensuring complete transparency.

Thus Thailand, all over legal forms meet only (1) foundation and (2) charity instead of non profit sector to carry on the social benefits. Likewise foundation and charity simply not possible to do variety activities at the same moments. However, only the foundation will be dealt into this passage to see whether it is suitable as a legal form for non profit companies. Foundations in Thailand exist in a great number and are socially or community oriented in their goals and activities. They are mostly public charity- and/or public service-oriented non profit companies. Section 110 of the Civil and Commercial Code 1992 provides the core elements of the foundation, defining it as consisting of properties or assets specially provided for public charity, religious, artistic, scientific, educational or other public purposes, not for profit sharing. The properties or assets must be managed strictly in accordance with the objectives of the foundation, and not for any personal benefit.

The law sees the foundation as properties or assets, rather than a type of companies. This might be to confirm that the foundation as a juristic person and its assets all belong to the public domain. Therefore, they must be managed only for the public benefit. Hence, very strict rules and regulations on foundations are in place to ensure that the public benefit is always prioritized. For examples, foundation for a clean transparent in Thailand, baan nok kamin foundation, ban dek ramindra school, and the mirror foundation.<sup>1</sup> Secondly, a charity is most common by the group of people who intent to do a single workshop. For examples, animal charity is particular type of charity can consist to four distinct groups as wildlife conservation organizations, pet and animal welfare organizations, hunting & fishing conservation groups, zoos and aquariums. Environmental Charities focus on ways to promote preservation, appreciation, and sustainable development for the environment.

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<sup>1</sup> Brighttv, at <https://www.brighttv.co.th/pr/> (last visited 20 November 2019).

It consist of two primary charity are environmental conservation & protection, and parks and nature centers.<sup>2</sup>

Even though the Thai limited company shall meets a requirement that have to provide at least two persons or three for a limited company must enter into a contractual agreement to set up a partnership or a limited company with the purpose of sharing profit. Section 1012 makes it clear from the very beginning that the partnership and company are subject to the profit legal forms with searching for the profit maximize as their objectives. It is therefore not surprising that their legal provisions do not include social or stakeholder elements.

In conclusion, we might assume that a limited company or other company forms, foundation, and charity are not suitable for non profit companies. But this does not mean that they are unworkable or unusable. This rather means that these three legal forms do not have the right qualities, thus making it difficult for non profit companies to run efficiently and grow.

## **2. The Characters of Non Profit Companies**

In the United Kingdom allows non profit companies for establish as a private limited companies, also they can raise in a form of charities. There are three types of private limited companies which known as companies limited by share capital, companies limited by guarantee and community interest company (CIC). Almost of the non profit companies are intent to introduce as a companies limited by guarantee which are entity without shareholders, instead it has members who act as guarantors. Registration under companies limited by guarantee require to disclose information such as company name, an address, the name of a director and a guarantor, three trustees and one or more members. It is significant by non profit companies when disclose the information by profit companies because non profit companies needs to inform the predictable amount of funding and the sources they have chosen by their activities, together with the funding amount whereby they have received from the supporter. Likely, the members of a companies limited by guarantee have no rights to a share of profits which must be applied for the social purposes only. If the company is

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<sup>2</sup> Top nonprofits, at <https://topnonprofits.com/lists/types-of-charities/>, (last visited 20 November 2019).

wound up, its assets must be applied for similar charitable purposes, often by transfer to another charity.

A company limited by guarantee has no shareholders to conduct but the company must have one or more members to do a special provision in the company's articles. As the member must appoint one of them to be the director of the company. The members will be entitled to attend general meetings and vote. The members meet at the Annual General Meeting and elect a committee to manage the club on their behalf and subject to the rules in the club's constitution. For examples, the company law provisions relating to general meetings, resolutions, etc. In ordinary share companies apply to companies limited by guarantee.

A company limited by guarantee must have at least one director. The directors may be given some other title, such a committee, management committee, board of managers, trustees, or governors. Their powers will depend on the terms of that particular company's articles, but typically they are given very wide powers of management. They may set up sub-committees, and delegate powers to them, and may give particular directors special responsibilities such as treasurer, membership secretary, etc. In some companies, some or even all the directors may be appointed by one or more outside bodies such as charities or local authorities who are backing the project. Some directors may be elected by particular interest groups as well.

A company limited by guarantee is not prohibited from distributing its profits by the Companies Act or any other law, but it is limits on distribution constant. Such restrictions will usually apply both to profits while the company is running and to the distribution of assets after paying creditors when the company is wound up. In many cases, these restrictions are reinforced by a prohibition on any payment of salaries or fees to the directors.

In fact share capital limits status will not show in a companies limited by guarantee, its fund has raising capacity because it cannot issue shares to those who has already participated. For this reason, some projects that are not essentially making profit motivated are set up as a companies limited by shares. A guarantee company can borrow money and may issue debentures or a loan stock. As there is no any of the shareholders, it is not possible to own a company limited by guarantee in the way that a company with a share capital is owned by its shareholders.

Especially, limited liability is an extent of financial responsibility for a companies limited guarantee. When shareholder or guarantor has company debts. It means that the finances and assets of the individual are protected beyond what they



invest in shares or guarantee to the company. Companies limited by guarantee do not have shares or shareholders. Each guarantor must agree to pay a fixed sum of money toward company debts, if and when required. This is called a guarantee. This is the limit of each guarantor's liability.

Under basic Thai corporate structure, the legal forms enact a limited company into Thai government agency as usual. There are two types of limited companies which are private limited companies and public limited company. Private limited companies governed by the Civil and Commercial Code. It has basic characteristics similar to those of Western corporations. A private limited companies is formed through a process that leads to the registration of a Memorandum of Association and Articles of Association as its constitutive documents. The shareholders enjoy limited liability such as limited to the remaining unpaid amount, if any of the par value of their shares. The liability of the directors may be unlimited if stipulated as such in the company's memorandum of association.

Thus, public limited companies governed by the Public Limited Company Act. The public limited companies registered in Thailand may offer shares, debentures, and warrants to the public and may apply to have their securities listed on the Stock Exchange of Thailand (SET). Public limited companies are governed by the Public Limited Company Act B.E.2535 as amended by Public Limited Company Act No.2 B.E.2544 and Public Limited Company Act No.3 B.E.2551. The rules and regulations concerning the procedure of offering shares to the public is governed by the Securities and Exchange Act B.E.2535 and the amendments to under the control of the Securities and Exchange Commission (SEC). Moreover, public limited companies is subject to compliance with the prospectus, approval, and other requirements.

Under the Thai Civil and Commercial Code, there are already several types of business companies. It should not be impossible to add another type of a similar nature. Then the proposed legal form for non profit companies in Thailand should be created as a variant of the country's main corporate legal form that may be created by revise section 1012 of the Civil and Commercial Code or through the legislation of a new Act on non profit companies as a sui generis law.

### **3. The Regulation of Non Profit Companies**

Under the United Kingdom, the key aims of the social benefits, it has to simplify and clarify the law by reducing bureaucracy, especially for smaller charities, providing a definition of charity, and modernizing the Charity Commission's functions and powers. Overall, it is a good piece of legislation and has achieved many of its objectives, in particular making clearer the purpose of charitable status with the introduction of the universal public benefits. As it simple requirement, a non profit companies has provide the help to people or it does useful for the society. When we put a non profit into the law, this would be corrupted the law to protect non profit activities.

In terms of the member has been used interchangeably in the Companies Act. The member is wider in scope and may be used in relation to all types of company. A person may become a member of a company without holding any shares. Company limited by guarantee or unlimited companies having no share capital, they have no shareholders but do have the members for supporting the company's activity.

Moreover, it noticed that campaigning and political activity can be legitimate and valuable activities for charities to undertake. However, a charity cannot exist for a political purpose which is any purpose directed at furthering the interest of any political party or securing or opposing a change in the law or policy. For example, the Lobbying Act 2014 sets out additional rules for organizations in the run up to the election. It regulates the spending that nonparty campaigners, including charities can spend on certain campaigning activities in the period before an election.

An objective to the non profit companies is be registered at the Companies House with an objective to the social benefits towards the purpose, ownership, and public support. Non profit companies typically have an activities which focuses on benefit society and whose goal is not primarily for profit called exempt purposes. Then the income that must never be distributed to any owners but recycled back into the non profit companies. The purpose of companies limited by guarantee would be entered into an activities that collectively for a social benefits. They regards to the incomes which generated by the funding resources. The companies limited by guarantee appears in a form of company limited, they can possibly looking for an incomes by provide funding which could be able to gain money from those people who intent to help the companies activities. So a company limited by guarantee is not prohibited

from distributing its profits by the Companies Act or any other law but non profit companies is a commonplace for restrictions to be put on profit distribution in the company's articles.

According to the Companies Act, it has determine for the social activities such as the prevention or relief of poverty, the advancement of education, the advancement of religion, the advancement of health or the saving of lives, the advancement of citizenship or community development, the advancement of the arts, culture, heritage, or science, the advancement of amateur sport, and the advancement of human rights, conflict resolution, or reconciliation, or the promotion of religious or racial harmony or equality or diversity.

Thus Thailand has not attends to allow non profit companies to introduce and for any promotion into a substantive law. According to section 1012 of the Civil and Commercial Code says that “A contract for the organization of partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing profit the profits which may be derived there from”. It is not possible to deal with non profit companies as the objective cannot share the profit. We have surrounded by business companies within a legal forms conduct a variety of the types of companies limited. This Section prioritize in the companies for operation by making in terms of profits. While other countries may provide in variety of an association, foundation, or cooperation in common.

## **Conclusion**

We have noticed that Thailand is not pretend to have non profit companies for its operation. It means that the company laws in which we operating a system at the company act is usually not identify for non profit company laws according to our Civil and Commercial Code. Thai company laws is limited companies included with Private limited companies and governed by the Civil and Commercial Code and Public limited companies governed by the Public Limited Company Act. The problem is that original form of Section 1012 has not allow non profit sector for an establishment into the state law because the law has required that they must fill up for generate profits. Then the study has resolve this problem by providing recommend guideline for deal with an issue. Therefore to, conquer for non profit companies status to introduce into Thailand.

Although the model which has containing in the United Kingdom has satisfied in this study program. The structure of the purpose that provide for social needs or so

called public benefit. An objectives that not to generate profits to the companies when operate non profit into country is very useful proposal. Another main structures is an activities that supporting into the programs is totally blind for profit. It means that each of the activity is not looking for a profit but doing it for a benefit towards the social needs. For examples, social needs such as UNICEF, Rotary company in the United Kingdom. In addition, main structure based on the tax status in terms of non profit sector. It will get exemption from income tax, corporate tax or inheritance tax which protected by the law.

According to the study, since we have provide a suitable for an original form of non profit company sector and also the information that necessary for the statement. There are some different of the main structures that we should be concerned to the point. The main difference in non profit companies model is management. It depends on their culture, traditional, resources, and population. In Japan has mostly concern to their old gender but in the United Kingdom has mostly concern to their human life and wild life. Another different is a position of the person who conduct the companies. It means that in the United Kingdom does not has the director or the shareholder to conduct the non profit companies, they have a number of the members to do all the positions.

The outcome of the study, we should adopt non profit company laws into Thailand. There are several reasons for supporting the matters. Thailand needs a social benefit by a social activities. Those activities belongs to an advantages in sports club or women's club, social or recreational organization, public educational institutions, public hospitals, promotion of health, promotion of community development, sound nurturing of youth, social education, and etc. If the possibly can have in the society, a social issues and social problems would be dissolved.

Into the United Kingdom model form up a charities act by the directors manage day to day operations of a company limited by guarantee. A company set up for charitable purposes in Charities act 2011 section 3(1) such as the prevention or relief of poverty, the advancement of education, the advancement of religion, the advancement of health or the saving of lives, the advancement of citizenship or community development, the advancement of the arts, culture, heritage, or science, the advancement of amateur sport, and the advancement of human rights, conflict resolution, or reconciliation, or the promotion of religious or racial harmony or equality or diversity. A company limited by guarantee has protect the people who is running the company from personal liability for the company's debts as well. This legal form is allows the company to operate nationwide. The strict legal requirements of this structure might also provide potential

donors, clients and business partners with confidence that the company is run according to stringent principles and acknowledged standards.

## **Recommendations**

First, we might have a revision of Section 1012 is for a measure with no sharing of profits in order to introduce non profit companies status that can probably operate non profit companies into Thailand. Also, to adopt non profit companies into Thailand for being used under its advantage into their activities when they are usually not to generate profit in order to expand the social benefits under the social needs for people. If we have success in term of revision, then we can be able to operate both significant companies in Thailand. Even though there are totally different in an objectives but non profit companies will not get contradicting to the Section 1012.

The outcome after revision would be “A contract for the organization of a partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing profit and also with a view of not for profit which may be derived there from”. This is a solution for recommend guideline for a revision of Section 1012 of the Civil Code law. After that we might be consider when decided to change the sentences inside of the Section 1012. It will becoming effect to those Thai company laws and Thai jurisdictions during operation period.

Second, to provide a new law or sui generis law for introduce a non profit companies into Thailand without contradicting to the law especially for Section 1012 of the Civil Code. So we have access the methods of a sui generis law for permit in non profit companies. An objective of a sui generis law will focus on a social benefits and to adopt non profit companies into Thailand as actual promotion. In the United Kingdom, the condition of non profit companies along with non profit company laws and regulations has been concerned by using a sui generis law such as a Charity Act and Foundation law on the achieves of the non profit company goals without contradicting to those general laws.

The outcome in create a sui generis law or a new law is to introduce a non profit companies into Thailand. An objective of a sui generis law will focus on a social benefits and to adopt non profit companies into Thailand. Also, an activities which perform according to this sui generis law must be generate for social benefits. In the United Kingdom, the condition of non profit companies along with non profit company laws and regulations has been concerned by using a sui generis law such as a

Charity Act and Foundation law on the achieves of the non profit company goals without contradicting to those general laws. A sui generis law will be based on the new law by giving the title which may be define such as a law to promote non profit companies in Thailand, a Thai non profit company laws, or non profit to Thai laws. As the outcome of the result, a sui generis law will be able to generate non profit companies and the laws in Thailand as usual. As it objective, when a sui generis law has been operated, it will not get conflict to the law of Section 1012 and any other laws of provision.

Both options are acceptable in my view, but writer prefer adding a new law or sui generis law for adoption a non profit companies into Thailand. It is preferable for the new legal form not to be a contradicting to the Civil and Commercial Code. These additional sections in the Code will provide the mandatory rules to ensure the orientation of Thai non profit companies relying on the new legal form towards social and community benefits.

However, given the traditional legislative process in Thailand, a revise of sections to the Civil and Commercial Code is likely to be difficult. This is because, though non profit companies cannot be governed by the provisions on the limited company, by their nature they are non profits, whereas the Code clearly states that there is only for profit companies which can be governed by the limited company. Hence, introducing amendments to the Civil and Commercial Code might be more complicated than create a new law, since this involves not only merger between non profit and for profit together in the limited company but instead of the legal forms, non profit companies will raise against for profit companies which have operating now.