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Changes to Thailand's Civil and Commercial Code

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There are a number of important recent statutory changes of Thailand's Civil and Commercial Code (CCC) that have major implications for foreign corporate investors in Thailand, including the minimum number of shareholders required for limited liability companies, board of director meetings via electronic media, abolishing of mandatory newspaper publication for general meetings, statutory recognition of mergers, deadlines for dividend payments etc. These changes will be summarised below.

The respective changes of the CCC have come into effect on 7 February 2023. To provide some guidance about these statutory changes, Thailand's Department of Business Development / Ministry of Commerce (DBD) has also provided some guidelines on how to comply with the recent amendments.

1. Minimum number of promoters / shareholders required for company formation / operation

Prior to the statutory changes, the CCC required at least three promoters to prepare and register the Memorandum of Association to form a limited liability company. However, after the CCC's amendments, the required minimum number of promoters has now been decreased to two promoters instead of three in order to facilitate the formalities of company formation (section 1097 CCC). This statutory change consequently also affected the minimum number of shareholders required for the company that was decreased from previously three shareholders to only two shareholders now.

This statutory change will help companies streamline their operational business structures by enabling them to simplify their shareholder structures by creating a leaner company structure as a consequence of the new possibility of having only two shareholders.

2. Ineffectiveness of registered Memorandum of Association after three years of non-company registration

Previous legal requirements for registering a company's Memorandum of Association (MOA) prescribed that the MOA would become ineffective in case the company registration was not carried out within 10 years from the date on which the registrar accepted registration of the MOA.

The CCC's amendments changed the permissible period by decreasing the time period from 10 to three years. In case the company registration is not carried out within three years from the date on which the registrar accepted the registration of the MOA, such registered MOA will become ineffective (section 1099 CCC).

This legislative change is meant to increase opportunities for other business operators who would like to use the same company names as the ones stated on the MOA previously registered. Such business operators will get to re-use the names for their company formation faster when such previously registered MOA will become ineffective after a much shorter period of time, which makes the names on such previously registered MOA become available again much earlier than before to such business operators for re-use.

3. Company seal on share certificates

Previously, before the amendments, the CCC only prescribed that all share certificates must be signed by at least one director and there was no requirement that the company seal should be also affixed to the share certificate(s).

However, under the amended CCC provisions, it is now prescribed that the company seal (if any) shall be affixed to the share certificate(s) (section 1128 CCC). The purpose of this change is to affirm more clearly that the share certificate(s) issued by the company to shareholders are issued in a legal manner.

4. Board of Directors' meetings via electronic media

The amended CCC now allows Board of Directors' (BOD) meetings to be conducted by any means of technological communication (e-meetings via electronic media) (section 1162/1 CCC) and directors do not need to be physically present at these meetings anymore. It should, however, be noted that this statutory change does not apply if there are restrictions under the company's existing Articles of Association preventing companies from having such e-meetings.

This change enhances and broadens ways to conduct the BOD meetings for companies since it provides a more cost-effective and time-saving option to companies. Companies are able to conduct the BOD meetings online now via electronic media without hassle of preparing and arranging for physical BOD meetings.

Companies that still have such meeting restrictions in their Articles of Association should consider amending them to give them more flexibility with regard to conducting board meetings.

5. Publishing a notice in a local newspaper when calling a general meeting of shareholders

In the amended CCC, the statutory requirement for companies to publish a notice in a local newspaper when calling a general meeting of shareholders has been removed. Companies can now call a general meeting of shareholders either by sending a notice by post with acknowledgement of receipt to all shareholders whose names appear in the register of shareholders or by delivering the notice in person not later than seven days before the date fixed for the meeting. However, in case companies have bearer share certificates, companies are still required to publish the notice in a local newspaper at least once or via electronic media (section 1175 CCC).

Nevertheless, the DBD has issued a clarification explaining that in case a company's Articles of Association (**AOA**) contain the requirement that companies must publish a notice in a local newspaper when calling a general meeting of shareholders (pursuant to a prior version of the CCC), companies will still need to publish the notice in a local newspaper even after the CCC's amendments come into effect. If companies no longer would like to publish the notice in a local newspaper, companies need to amend their AOA accordingly to remove such requirement for newspaper publication from their AOA.

6. Minimum number of shareholders at a general meeting of shareholders

Previously, before the amendments, the CCC only required the total number of shares altogether not less than one-fourth of the capital of the company at a general meeting of shareholders in order to pass a resolution, without specifying at all the minimum number of shareholders required to attend the meeting. Now, to clarify the minimum number of shareholders required at a general meeting of shareholders, the amended CCC additionally prescribes that at least two shareholders (or proxies) must attend the meeting in order to pass a resolution, with the same total number of shares altogether still required as before. The total number of shares altogether at the meeting still must be at least one-fourth of the capital of the company (section 1178 CCC).

7. Deadline for dividend payment

Previously there was no deadline prescribed under the CCC for completing dividend payments. Under the amended CCC, to protect shareholders' right to receive the dividend within a fair and reasonable time frame, it is now stated that dividend payment must be completed within one month from the date of the resolution of the general meeting of shareholders or of the board of directors, as the case maybe (section 1201 CCC).

8. Recognition of mergers

Previously, the CCC only recognised company amalgamations, i.e. formation of a new company through combination of two or more companies which resulted in the fact that neither company combined was still maintained as a legal entity, and there would be an entirely new company formed instead ($A+B=C$). But under the amended CCC, the possibility to merge companies has been created, i.e. one company still retains its juristic person status and another merged company(s) loses its status as a juristic person and ceases to exist. For instance, one company can merge with another company where either one of the two companies will still survive as a legal entity but the other one will be liquidated ($A+B = \text{either } A \text{ or } B$). At the same time, the company amalgamation has not been abolished and is still possible under the amended CCC. In this respect, it should be noted that a special resolution passed at a general meeting of shareholders is required for execution of either a merger or an amalgamation (section 1238 CCC).

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