

Corporate Commercial

Major Changes in Law Related to Private Limited Companies

Introduction

Wide-ranging amendments have been made to the Thai Civil and Commercial Code ("**CCC**") which are intended to ease the administrative burden on private limited companies and provide more practical solutions to business issues. The amendments, which took effect on 7 February 2023, were set out in the **Act amending the Civil and Commercial Code (No. 23) B.E. 2565 (2022)**, which was published in the Royal Gazette on 8 November 2022.

In brief, the key amendments are as follows:

A. Reduce number of promoters for incorporation of a private company

The minimum number of promoters when incorporating a private company has been reduced from three to two individuals (Section 1097).

B. Incorporating deadlock mechanisms into the articles of association is recommended

Previously, Section 1108 (1) provided that, at the statutory meeting, the promoters shall agree on the articles of association, which may include deadlock mechanisms to resolve disputes between directors or shareholders.

The amended CCC now provides a strong recommendation that the promoters should also include deadlock mechanisms in the articles of association.

C. Share certificate signed with seal (if any)

Every share certificate shall be signed by at least one director and shall bear the seal of the company, if any (previously only requiring at least one director's signature) (Section 1128).

D. Allowing board of directors' meeting to be held electronically

Further to the recent introduction of electronic meetings pursuant to the Emergency Decree on Electronic Meetings, B.E. 2563 (2020), the CCC is now amended to explicitly allow a board of directors' meeting by any means of technology in accordance with the law on e-meeting without such director being physically present at the meeting, unless otherwise prohibited by the articles of

Corporate Commercial

association. A director using such electronic communication forms part of the quorum and is entitled to vote (Section 1162/1).

E. Removing the requirement on newspaper publication

The requirement that an invitation notice to a shareholders' meeting must be published in a local newspaper was removed, and it is now sufficient to send the notice to all shareholders by registered mail. However, where the company has issued bearer certificates, publication of the invitation notice in a newspaper or by electronic means is still required (Section 1175).

F. The number of shareholders constituting quorum

In addition to the requirement that the aggregate shares held by the shareholders (or proxies) who attend the shareholders' meeting must be at least one-fourth of the total capital, the amended CCC now clearly requires the minimum number of shareholders (or proxies) who attend the shareholders' meeting must be at least two persons in order to constitute quorum (Section 1178).

G. Timeframe to complete the payment of dividends

The payment of dividends must be completed within one month from the resolution date of the meeting of the shareholders or of the board of directors, as the case may be (Section 1201).

H. Amended reasons for dissolving a private company by court order

A private company may be dissolved by court order if, among other reasons as set out under Section 1237, the number of shareholders has decreased to one, or there are any other reasons which cause the company to be unable to continue its existence.

I. Substantive amendments relating to the amalgamation of companies

The provisions on amalgamation were amended. An amalgamation can now be carried out by either of two options, namely: (a) two or more companies are amalgamated into a new company in which the original companies cease to be juristic persons; or (b) two or more companies are merged into another company which still survives while the merged companies cease to be juristic persons (Section 1238).

The changes made to amalgamation also include, for example:

- 1) Adding a buy-out mechanism for a shareholder who objects to the amalgamation (Section 1239/1);

Corporate Commercial

- 2) Requiring a time limit that (a) the notice for objection be sent to company's creditors and (b) the shareholders' resolution be published in a well-known daily newspaper within 14 days from the date of the shareholders' resolution (Section 1240);
- 3) Reducing the waiting period for objection by creditors from 60 days to one month (Section 1240);
- 4) Adding an amalgamation meeting process (Section 1240/1, Section 1240/2); and
- 5) Adding requirements for registration and cessation of juristic person status (Section 1241, Section 1242).

Interesting Note

It is worth noting that, if any provisions in the existing articles of association are inconsistent with the amended CCC, such existing articles of association would then prevail, provided they are not contrary to public order or good morals. Therefore, it is recommended that the articles of association be amended where necessary so as to enhance ease of doing business.

Other Amended Regulations Applicable to Private Limited Companies

A. Registration of a company with more than THB 5 million capital

On 3 February 2023, the Department of Business Development ("**DBD**"), the Ministry of Commerce, issued an order No. 1/2566, which took effect from 7 February 2023, to replace the previous order No. 66/2558 regarding the documents required for the registration of a company with more than THB 5 million capital, in a case of incorporation and capital increase.

In brief:

- 1) Incorporation: The documents required for the incorporation remain the same as per the previous order, i.e., in case of payment by cash, a bank certificate confirming the payment for shares in the director's account is required and, within 15 days after the registrar accepts the registration, a bank certificate to confirm the company's receipt of such payment is required to be submitted.
- 2) Capital increase: The new order makes it clearer that a bank certificate confirming payment is required only for the increased portion of capital, and not the entire capital of the company. While this is the current practice, the provision was not as clear in the order No. 66/2558.

Corporate Commercial

- 3) Amalgamation: The new order added certain provisions with respect to amalgamation with capital increase at the same time, that is:
- (i) In case of a new company established after amalgamation, a bank certificate confirming the payment for the increased portion of shares in the director's account is required and, within 15 days after the registrar accepts the registration, a bank certificate to confirm the company's receipt of such payment is required to be submitted; and
 - (ii) In case of one company surviving after amalgamation, a bank certificate to confirm the surviving company's receipt of the payment for the increased portion is required to be submitted.

B. New Application Forms

On 3 February 2023, the DBD also issued regulation No. 7 B.E. 2566 (2023) regarding the registration of a company, which took effect on 7 February 2023, to amend certain criteria and procedures, as well as the following application forms, to be in line with the amended CCC:

- 1) Application for registration of a limited company (Form BorOrJor. 1);
- 2) Memorandum of association (Form BorOrJor. 2);
- 3) Application for dissolution and liquidation (Form LorChor. 1);
- 4) Application for certificate of business registration (Affidavit) in English (Form BorThor. 2); and
- 5) Certificate of business registration (Affidavit).

The previous versions of the application forms mentioned above can be used until 31 March 2023, and will no longer be accepted by the DBD from 1 April 2023 onwards.

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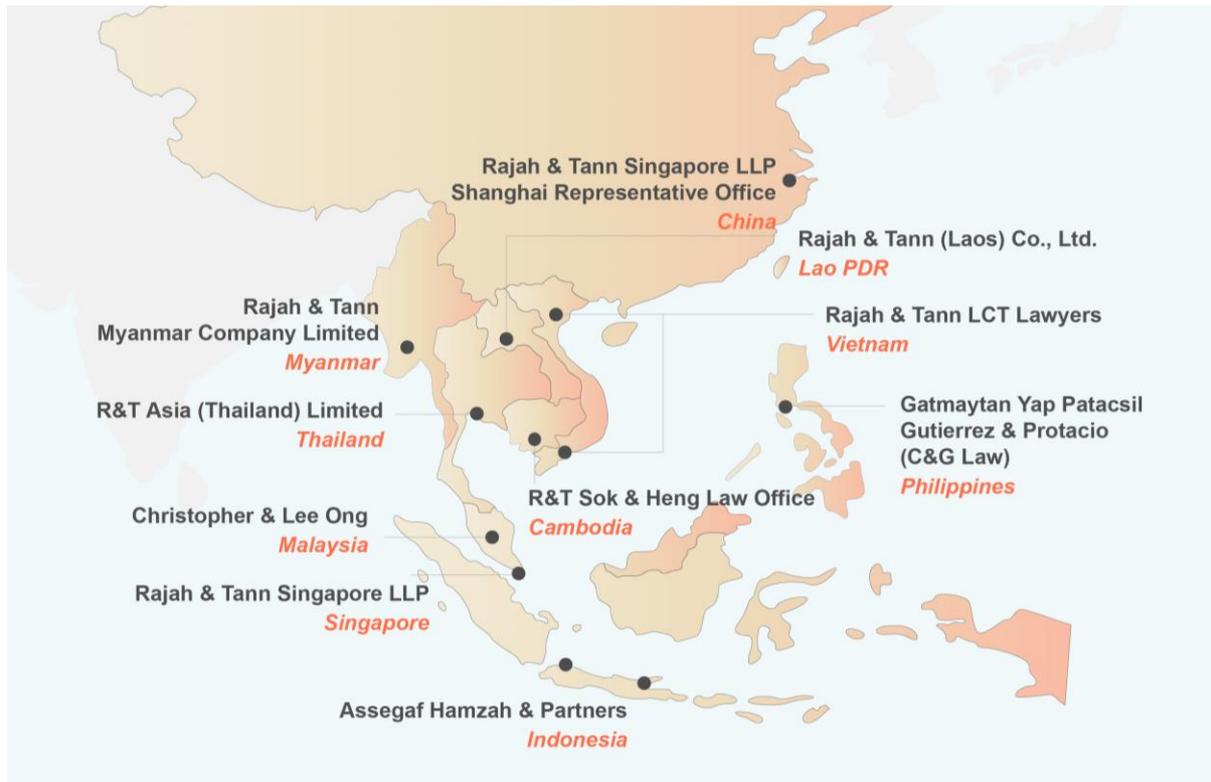
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