

Amendment of Thailand's Civil and Commercial Code, Title 22 - Partnerships and Companies

According to the amendment of the Civil and Commercial Code (“CCC”) (No. 23) B.E. 2565, the revisions under the CCC (the “**Amended Act**”) are as follows:

- (1) Amendment of a partnership or company's place of registration (Section 1016 and Section 1017).
- (2) Amendment of the collection of the fee for documents (Section 1020/1).
- (3) Amendment of the minimum number of promoters (Section 1097).
- (4) Amendment of the company registration period, from the date of registering the memorandum of association (Section 1099).
- (5) Amendment of the business to be transacted at a statutory meeting; the method for resolving issues or unresolved disputes between the directors or shareholders should also be included (Section 1108(1)).
- (6) Amendment of the details on the share certificate (Section 1128, paragraph 1).
- (7) Add a provision regarding an electronic meeting of the board of directors (Section 1158/1162(1)).
- (8) Amendment of the methods on how to summon a shareholders meeting (Section 1175, paragraph 1).
- (9) Amendment of the quorum requirements for a shareholders meeting (Section 1178).
- (10) Amendment of the period for the completion of dividend distribution (Section 1201, paragraph 4).
- (11) Amendment of the reason for the company's dissolution (Section 1237 (4) and (5)).
- (12) Amendment of Part IX - Amalgamation of Limited Companies (Section 1238 to 1243).
- (13) Amendment of the conversion of a registered partnership and a limited partnership into a limited company (Section 1246/1).

Please see details of the Amended Act shown in the Schedule below.

Please note that the provisions below according to the Amended Act are translated by us - it is not an official translation from the competent authority - and are subject to change.

This is intended merely to provide a regulatory overview and not to be comprehensive, nor to provide legal advice. Should you have any questions on this or on other areas of law, please do not hesitate to contact:

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Schedule

Provisions under the Amended Act
<p>Section 1016 - Registration of partnerships or companies: any alterations subsequently made in the details of the registered partnership or company, and other matters required to be registered by the provisions under XXII Partnerships and Companies, shall be performed or registered at the partnership and company registration office in the area where the head office is located, or as prescribed in a Notification by the Minister in charge.</p>
<p>Section 1017 - If the statement or information to be used for registration or publication occurs overseas, the period to start counting for registration or publication is when the statement or information arrives at the head office of the partnership or company.</p>
<p>Section 1020/1 - The Minister in charge shall have power to issue Ministerial Regulations to reduce or exempt the fees under section 1018 and section 1020.</p> <p>The fees according to such Ministerial Regulations under paragraph one can be set differently according to the type of transaction.</p>
<p>Section 1097 - Any two or more persons may, by subscribing their names to a memorandum of association and performing other acts in accordance with the provisions of the CCC, promote and establish a limited company.</p>
<p>Section 1099 - A memorandum of association shall be made at least in two original copies, signed by all promoters, certified by two witnesses and one of which shall be registered.</p> <p>If the company registration is not performed within three years from the date upon which the registrar accepts registration of the memorandum of association, such memorandum of association shall become ineffective.</p>
<p>Section 1108 - Business to be transacted at the statutory meeting shall be as follows:</p> <p>(1) Adoption of the articles of association of the company, which should also include the method for resolving issues or unresolved disputes between the directors or the shareholders;</p> <p>(2) Ratification of the contracts entered into by the promoters and any expenses paid by them in promoting the company;</p> <p>(3) Determination of the amount of money to be paid to the promoters, if it is intended to be paid;</p>

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(4) Determination of the number of preference shares, their nature and the extent of the preferential rights, if any;

(5) Determination of the number of ordinary shares or preference shares to be issued if the payments for such are fully or partly made otherwise than money/cash, if any, and the amount up to which they shall be considered as paid up;

The description of the services or property in return for which such ordinary shares or preference shares shall be issued as if the actual payments for had been made shall be specifically declared at the meeting.

(6) Appointment of the first directors and auditors of the company, determination of their authorisation.

Section 1128 - Every share certificate must be signed by at least one director **and affixed with the company's seal (if any).**

A share certificate shall contain the following particulars:

(1) Name of the company;

(2) The share number on the certificate;

(3) The value of each share;

(4) If the shares are not fully paid up, the amount paid on each share; and

(5) Name of the shareholder or a statement that the certificate is issued to the bearer.

Section 1158 - Unless otherwise provided by the articles of associations of the company, a director shall have the power as described in the following **seven** sections.

[Additional provision]

Section 1162/1 - A meeting of directors may be carried out electronically using any technology; the directors are not required to appear in person at the meeting unless prohibited by the company's articles of association.

Such directors meeting under paragraph one shall comply with the law on electronic conferencing.

It shall be deemed that the directors who attend the meeting electronically as in paragraph one have attended the meeting of directors, and will be counted as a quorum with the right to vote at the meeting.

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Section 1175 - Notice of a general meeting shall be sent by mail with return receipt requested to every shareholder whose name appears in the register of the company, with return receipt requested, by no later than seven days prior to the date set the meeting. **If there is a shareholder of the company holding a certificate issued to the bearer, such notice shall be publicised in the local newspaper at least once or via electronic media in accordance with the rules prescribed in the ministerial regulations by no less than seven days prior to the meeting date.** However, notice of a general meeting for adopting a special resolution shall proceed as mentioned above by no later than 14 days prior to the date appointed for the meeting.

The notice of a general meeting shall specify the place, date and time of the meeting, as well as the nature of the business to be discussed or transacted thereat. Regarding a notice of a general meeting for adopting a special resolution, the substance of the proposed resolution shall also be included in the notice of the meeting.

Section 1178 - The general meeting **must have at least two shareholders or proxies** attending the meeting and holding shares in aggregate of not less than one-quarter of the company's capital in order to vote on any matter.

Section 1201 - No dividend may be declared except by a resolution of a general meeting.

The directors may from time to time pay the shareholders an interim dividend as appear to the directors to be justified by the profits of the company.

No dividend shall be paid out of funds other than profit. In the case where the company has incurred losses, no dividend may be paid unless such losses have been made good.

Payment of dividends shall be **completed** within one month from the date of the resolution of the general meeting or of the directors, as the case may be.

Section 1237 - A court may order that the company be dissolved in any of the following cases:

- (1) If there is a default in submitting a statutory report or holding a statutory meeting;
- (2) If the company does not commence its business within one year from the date of registration or has ceased to operate for one year;
- (3) If the business of the company can only be carried on at a loss and there is no prospect of recovery;
- (4) If the number of shareholders is reduced to **one**; and
- (5) **When there is any other reason preventing the company's continuance.**

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However, in the case of a default in submitting a statutory report or holding a statutory meeting, the court may order that a statutory report be submitted or a statutory meeting be held in lieu of dissolution of the company, as it may see fit.

Section 1238 - A limited company can be merged by using a special resolution

Two or more companies may be merged in one of the following ways:

(1) Amalgamated into a new company, whereupon both amalgamated companies lose their status as a juristic person.

(2) One company still has the status of a juristic person while the other merged company ceases to be a juristic person.

Section 1239 - The special resolution adjudicating **the merger of limited companies** shall be registered within 14 days from the date of the resolution.

[Additional provision]

Section 1239/1 - When there is a special resolution to merge companies but a shareholder objects to such merger, the company shall arrange a person to purchase the shares of such shareholder at the agreed price. If an agreement about such price cannot be reached, the price shall be used as determined by the appraiser. If such shareholder refuses to sell such shares within 14 days from the date of receipt of the offer to purchase the shares, the company is allowed to proceed with the merger and it shall be deemed that such shareholder is the shareholder of the merged company.

The appointment of the appraiser under paragraph one shall be in accordance with the rules, procedures and conditions prescribed in the ministerial regulation.

Section 1240 - Once there is a special resolution to merge companies, the companies shall deliver a written notice of such resolution within 14 days from the date of the resolution to the companies' creditors according to the names listed in the companies' accounts as at the date of such resolution. Regarding such notice, an objection by such creditor can be raised on the condition that it shall be submitted within one month from the date of receipt of the notice. Additionally, the companies shall publicise such resolution in a widely distributed daily newspaper within such period of 14 days.

If an objection is raised by the creditor, the companies cannot proceed with the merger unless the objection is satisfied or appropriate security is placed for it.

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[Additional provision]

Section 1240/1 - After compliance under Section 1239 and Section 1240, the directors of the companies to be merged shall convene a meeting of all shareholders to consider the following matters:

- (1) The name of the merged company in which it can use a new name or the current name of a particular company to be merged;
- (2) Objectives of the merged company;
- (3) Capital of the merged company must be not less than the capital of the original company that has been merged;
- (4) Allocation of the shares of the merged company to shareholders, provided that Section 1222 shall not apply;
- (5) Memorandum of association of the merged company;
- (6) Articles of association of the merged company;
- (7) Election of directors of the merged company;
- (8) Election of the auditor of the merged company;
- (9) Other matters necessary for the merger, if any.

However, the meeting must be completed within six months from the date upon which one of the companies has voted to merge as the latest, unless the shareholders meeting under this Section passes a resolution to extend the period of registration; the total period of which shall not exceed one year.

[Additional provision]

Section 1240/2 - In a meeting to consider matters under Section 1240/1, it shall be held in the place where the head office of any company to be merged is located or in a province close to the location of the head office, by complying with the following conditions:

- (1) There must be shareholders holding shares in aggregate of not less than one-half of the total number of shares of each company to be merged in order to constitute a quorum;
- (2) The shareholders attending the meeting shall elect one shareholder to be the chairman of the meeting;
- (3) The majority vote of the shareholders attending the meeting under (1) shall be the decision of the meeting, unless otherwise agreed.

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[Additional provision]

Section 1240/3 - The former board of directors of each company to be merged shall deliver the business, assets, accounts, documents and evidence of the company to the board of directors of the merged company within seven days from the date of completion of the meeting under Section 1240/1.

Section 1241 - The board of directors of the merged company shall apply for registration of the merger and submit a memorandum of association as well as the articles of association approved by the meeting under Section 1240/1 to the registrar within 14 days from the date of completion of the meeting under Section 1240/1.

Section 1242 - Once the registrar has accepted the registration of the merger of companies, the registrar shall note in the register as follows:

(1) In the case of amalgamation into a new company, it shall be noted that the amalgamated companies have ceased to be juristic persons.

(2) In the case of a merger where one of the companies remains a juristic person, it shall be noted that the other company has ceased to be a juristic person.

Section 1243 - The merged company acquires all the assets, debts, rights, duties and responsibilities inherent to the companies being merged.

Section 1246/1 - A registered partnership or limited partnership may transform into a limited company with the consent of all partners and the following actions are taken:

(1) Notify the registrar in writing of the consent of partners to convert the partnership into a limited company within 14 days from the date of said consent by all partners;

(2) Publish a notice at least once in a local newspaper, and send to all creditors known to the partnership, containing details of the proposed conversion into a company. Creditors are required to present any objection they may have to such conversion within 30 days from the date of such notice.

If an objection is raised, the partnership cannot proceed with the conversion unless the objection is satisfied or appropriate security is placed.

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