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UPDATE ON THE BILL ON AMENDMENT TO THE CIVIL AND COMMERCIAL CODE AND THE ACT OF PRESCRIBING OFFENCES RELATING TO PARTNERSHIPS, COMPANIES, ASSOCIATIONS AND FOUNDATIONS

Linda O., Partner; Saithip M., Partner; Panjaree C., Senior Associate; Proudtat R., Associate

On 22 July 2022, the Bill on Amendment to the Civil and Commercial Code ("**CCC**") regarding partnerships and companies and the Act of Prescribing Offences Relating to Partnerships, Companies, Associations and Foundations (collectively "**The Amendments**") were approved by the House of Representative and the Senate. However, the senate has considered and made some minor amendments on the bill and then returned the bill to House of Representative for re-consideration.

The purpose of these amendments is to:

- reduce unnecessary expense and time involved in the process of foreign investment in Thailand
- increase Thailand's competitiveness as an investment target by reducing the minimum number of promoters required in the incorporation of a private limited company

- explicitly allow and cover the use of technology in the conduct of meeting via electronic means which has become an increasingly prevalent practice as a result of the COVID-19 pandemic.

The key changes to the CCC regarding partnerships and companies are summarized, as proposed by The Amendments, below:

1. Place of Applying for Company Registration (Section 1016 of the CCC)

Current Legislation: The application for incorporation and any subsequent changes are to be submitted at the registration office in the province where the company's head office is located.

Proposed Amendment: The registration office is to be determined by the competent Minister. He or she will have the authority to issue regulations concerning where companies are to submit the application.

2. Incorporation (Sections 1097 and 1099 of the CCC)

Current Legislation: At least three individuals must act as promoters in the incorporation of a private limited company.

Regarding the limited timeframe for completion of the incorporation, the registered Memorandum of Association ("**MOA**") will be void if the company fails to register the incorporation within 10 years.

Proposed Amendment: The minimum number of people required in the incorporation of a private limited company will be reduced to two individuals for incorporation including the minimum number of shareholders to be maintained throughout the operation.

Moreover, the MOA will be void if the company fails to register the incorporation within three years.

3. Share Certificate (Section 1128 of the CCC)

Current Legislation: Company's seal is not required to be affixed on the share certificates.

Proposed Amendment: If a private limited company has registered its seal, the share certificates of the company must be signed by at least one director and the company's seal must be affixed on the share certificates.

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4. Electronic Meeting for Board of Directors Meeting (Section 1162/1 of the CCC)

Since the business sector has been impacted by the Covid-19 pandemic and the concept of electronic meeting was adopted and used globally, the provisions of the board of directors meeting prescribed in the CCC is therefore amended to explicitly emphasize the use of technology and facilitate the conduct of meetings using technology.

Current Legislation: The CCC has not explicitly covered the use of technology in conducting board of directors meetings, which mostly have been conducted in person.

Proposed Amendment: The bill prescribes that the board of directors meeting can be conducted by way of electronic means in accordance with Thai regulations in relation to e-meeting such as the Royal Decree on Teleconferences through Electronic Means B.E. 2563 (2020) and Notification Re: Standards for Maintaining Security of Meetings via Electronic Means B.E. 2563 (2020).

These regulations generally provide that the directors who attend the meeting via teleconference are not required to be physically present at the meeting and are counted to form the quorum as well as entitled to vote in the meeting. However, in the cases of each company, the requirement of electronic meeting may be subject to or prohibited by the provisions of Articles of Association of the specific company.

5. Shareholder's Meeting (Section 1175 and 1178 of the CCC).

Current Legislation: The current CCC requires a newspaper publication of a notice of summon regarding an upcoming shareholders' meeting (i.e. Annual General Meeting of Shareholders and Extraordinary General Meeting of Shareholders). Moreover, the current CCC does not specify the minimum number of shareholders that must attend the meeting in order to constitute a quorum.

Proposed Amendment: A newspaper publication of a notice for summoning the shareholders' meeting is no longer required.

However, in the case of a company which has shares with bearer certificate, the publication of such notice in local newspaper or publication by way of electronic is still required.

With regard to quorum of the shareholders' meeting, this bill clearly specifies that the shareholders' meeting must consist of at least two shareholders attending in person or by proxy in order to constitute a quorum with the total number of shares of attending shareholders not less than one-fourth of the company's capital.

6. Dividend Payment (Section 1201 of the CCC)

Current: Legislation: In 2017, National Council for Peace and Order issued Order No. 21/2560 to amend the CCC requiring that dividend payment must be made within 1 month from the date of the resolution of shareholders meeting or the event in which the board of directors meeting is passed.

However, the interpretation of the word "make" in accordance with the Order, in stating that companies must "**pay**" the dividend payment within one month from the date of the resolution of shareholders' meeting or event in which the board of directors meeting is passed created ambiguity. Some companies interpreted the Order to mean that they are to "start" the dividend payment, as opposed to complete it, during the timeframe.

Proposed Amendment: This bill clearly specifies the purpose of the provision by substituting the word "make" with the word "completed" to state that the dividend payment must be **completed** within one month from the date the resolution of shareholders' meeting or board of directors meeting is passed (rather than having started).

As such, the Act of Prescribing Offences Relating to Partnerships, Companies, Associations and Foundations will be consequently amended to be in line with this provision.

7. Company's Dissolution by the Court's Order (Section 1237 of the CCC)

Current Legislation: One of the grounds for petition to the court for an order to dissolve the company is that the number of shareholders have decreased to less than three people.

Proposed Amendment: According to the bill on reducing the minimum number of shareholders to two in number, the court's order for dissolution can be made when the company has only one shareholder maintained.

8. New Concept of Amalgamation and Merger (Part 9 of the CCC)

Current Legislation: The amalgamation prescribed in the current CCC refers to the combination of two or more companies to form a third company. By virtue of law, the two former companies will be automatically wound up without any registration.

In this case of an amalgamation, Company A + Company B becomes Company C.

Amendment: The bill provides alternatives on merger in which two or more companies are merged and creates a result in which one of those companies has its legal status as a merged company while the other company(ies) will automatically be considered "wound up" by the law.

In this case of merger, Company A + Company B becomes Company A or Company B.

In addition to the above–mentioned amendment to the CCC, The Act of Prescribing Offences Relating to Partnerships, Companies, Associations and Foundations will be consequently amended to be in line with the amended provisions of the CCC. The key revisions in the Act are made to address the failure to comply with the provisions in the bill related to dividend payment and amalgamation.

9. Next Steps

We recommend that companies take this opportunity to amend their Articles of Associations to ensure that the articles are aligned with the changes stipulated by the Bill on Amendment to the CCC and the Act of Prescribing Offences Relating to Partnerships, Companies, Associations and Foundations. Doing so would increase efficiency in conducting business as well as decrease potential confusion of asymmetry and misunderstanding. As such, we invite you to get in touch with the authors of this article for further information concerning the updating of your company's Articles of Association.

For more information, please contact:

Linda Osathaworanan | Partner: linda@siampremier.com
Saithip Mansri | Partner: saithip@siampremier.com
Panjaree Chumuang | Senior Associate: panjaree@siampremier.com
Proudtat Rattanadilok Na Phuket: proudtat@siampremier.com

Or Tel: +66 2 646 1888

SIAM PREMIER
INTERNATIONAL LAW OFFICE LIMITED

SIAM PREMIER
INTERNATIONAL LAW OFFICE LIMITED

26/F The offices at Central World No. 999/9
Rama I Road, Pathumwan, Bangkok 10330

Tel: +66 (0) 2646 1888
Email: spi-info@siampremier.com