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Update on the Bill on Amendment to the Civil and Commercial Code and the Act of Prescribing Offence Relating to Partnerships, Companies, Associations and Foundations (Part 2)

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Further to our newsletter published on 19 August 2022, the Act on Amendment to the Civil and Commercial Code (No. 23) B.E. 2565 (2022) (the "**CCC**") regarding partnerships and companies and the Act of Prescribing Offences Relating to Partnerships, Companies, Associations and Foundations (No. 5) B.E. 2565 (2022) (collectively the "**Amendments**") were published in the Thai Royal Government Gazette on 8 November 2022.

The Amendments will come into force after the lapse of ninety days period from the date following the date of their publication in the Government Gazette, which will be on 7th February 2023.

Key changes to the CCC regarding partnerships and companies prescribed under the Amendments:

Promoters:	The minimum number of individuals (who are promoters) required to form a private limited company is two persons (*prior to this amendment,* at least three individuals promoters were required.
Validity of the Registered Memorandum of Association ("MOA"):	The registered MOA will become invalid if the registration of company incorporation is not proceeded within three years from the date of the MOA's registration.
Share Certificate:	Every share certificate must be signed by at least one director and affixed with a company's seal - if any. Accordingly, if any company does not have a company's seal, its share certificate issued must be signed by at least one director only and affixation of company's seal would not be required.
Board of Directors' Meetings via Electronic Means:	Unless otherwise prohibited by the company's Articles of Association, a Board of Directors' meeting can be conducted via electronic means in accordance with the law relating to e-meetings and a director is not required to be physically present at the meeting. A director attending the meeting via electronic means will be counted to form the quorum and is entitled to vote at the meeting.
Notice Summoning Shareholders Meetings:	An invitation notice to shareholders' meetings shall be sent to every shareholder whose name appears in the register of shareholders by way of registered post with acknowledgment of receipt and advertisement in a local newspaper is no longer required *(prior to this amendment, invitation notice must be sent by registered post with acknowledgment of receipt as well as advertised in a local newspaper).* However, in case of a company having the shares with bearer certificate, advertisement of invitation notice in a local newspaper or via electronic means would still be required.

Quorum for Shareholders' Meetings:	It is now clearly stated that at least 2 shareholders and/or their proxies representing not less than 25% of the share capital are required to be present at a shareholders' meeting in order to form a quorum and vote for any resolution (*prior to this amendment, the fact that there must be at least 2 shareholders or proxies being present was not explicitly stated).*
Dividend payment:	The payment of dividend must be completed within one month from the date the resolution of shareholders' meeting or board of directors meeting (as the case may be) (*prior to this amendment, it was not clear if the one month period was for to start or to complete the dividend payment*).
Ground for Company Dissolution:	The Court may order a company to dissolve, when the number of its shareholder reduces to one (*prior to this amendment, if the number of shareholders reduces to less than three, the Court may order such company to be dissolved*).
New Concept of Amalgamation and Merger:	• There are 2 types of consolidation of private limited companies: (1) an amalgamation, which is a consolidation of two or more companies into a new entity, whereby all such amalgamating companies will be dissolved (e.g. Company A + Company B becomes Company C); and (2) a merger, which is a consolidation of two or more companies, whereby only one merging company will remain existing and the rest will be dissolved (e.g. Company A + Company B becomes either Company A or Company B). (*prior to this amendment, there was only the concept of amalgamation prescribed in the CCC*). • Both amalgamations and mergers require a special resolution of the shareholders' meeting and such special resolution shall be registered with the Ministry of Commerce within 14 days from the special resolution date. • The new entity or the surviving company after the amalgamation or merger, as the case may be, will, by operation of law, automatically assume all property, debts, rights, duties and liabilities of the amalgamating companies or the merging companies, which are dissolved. • In the case that there is an objection by a shareholder to the amalgamation or merger, the company shall arrange for a purchaser to buy the shares of such shareholder at the agreed price. If the price could not be agreed upon, the purchase price shall be determined by a valuer, who shall be appointed in accordance with the criteria, procedure and conditions prescribed in a Ministerial Regulation. *(This is the new concept introduced by this amendment).* • Within 14 days of the special resolution date, the amalgamating companies or the merging companies shall send a notice of the resolution on amalgamation or merger, as the case may be, to their respective creditors, whose name appeared in the company accounts, and shall also have such resolution advertised in a widespread daily newspaper. The creditors shall be given one month period for objection (*prior to this amendment, the objection period was sixty days*).

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

Recommendation:

We recommend that companies consider amending their Articles of Associations to ensure alignment and compliance with the changes prescribed under the Amendments. Doing so would increase efficiency and reduce unnecessary burden and expense in conducting business as well as decrease potential confusion of asymmetry and misunderstanding. For any further information or assistance, please do not hesitate to contact us.

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