

## PROPOSED AMENDMENTS TO PARTNERSHIPS AND COMPANIES LAW UNDER THAI CCC

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Certain provisions of the Partnerships and Companies Law under the Civil and Commercial Code of Thailand ("CCC") are to be amended, in recognition of the fact they are not suitable for current business investment opportunities and prohibit the adoption of advanced technology, as well as imposing unnecessary burden on business operators.

"House of Parliament of Thailand approved the draft amendments to certain existing provisions of the Partnerships and Companies Law under the CCC (the "Amendment"), which have been submitted for the King's signature."

On 14 September 2022, the House of Parliament of Thailand approved the draft amendments to certain existing provisions of the Partnerships and Companies Law under the CCC (the "Amendment"), which have been submitted for the King's signature. The operation of every Thai private limited company is governed by the CCC and the Amendment aims to modernise and simplify its requirements and obligations.

After the King's signature, the Amendment will be published in the Thai Royal Gazette and will come into effect 90 days thereafter. We set out following a summary of key points under the Amendment.

### 1. COMPANY INCORPORATION

Section 1097 of the Amendment allows no less than two persons to form a private limited company ("Promoter"). This is an update from the current requirement under the CCC in which at least three Promoters were required.

### 2. VALIDITY OF THE REGISTERED MEMORANDUM OF ASSOCIATION

The validity of a registered Memorandum of Association ("MoA") is specifically addressed under the Amendment.

Section 1099 of the Amendment imposes an obligation on a business operator to register the incorporation of its private limited company within three years from the registration date of its MoA. Otherwise, the registered MoA will be invalid. This is a change from the current position where a registered MoA is valid for 10 years before the private limited company is incorporated. This resulted in many registered MoAs proceeding through the official system without ever being completed. With this development, the registrar will be able to strike any registered MoA from its system if the business operator fails to incorporate its private limited company within the three years of the MoA's registration.

This will expedite the company incorporation process, should the registration of the MoA and the company's incorporation not be undertaken on the same day.

## 3. SHARE CERTIFICATES

Currently, a share certificate which is signed by at least one director satisfies the requirement under the CCC. However, Section 1128 of the Amendment requires share certificates to be (i) signed by at least one director and (ii) affixed with a company's seal (if available). Non-compliance with this requirement could expose the company to a fine.

## 4. BOARD OF DIRECTORS' E-MEETING

The Amendment adds Section 1162/1 as a new provision under the CCC which enables a director to attend meetings of the Board of Directors via electronic means, unless otherwise prohibited under the company's articles of association. A director who attends the meeting via electronic means will be counted within the quorum and would be entitled to vote at the meeting. However, meetings via electronic means must follow the provisions of the applicable electronic meeting regulations.

This new provision will support and encourage directors to convene meetings as they deem necessary without having to consider their availability to attend in person and, more importantly, will reduce the expenses of directors who live in different locations.

**"This new merger concept will provide room for business operators to explore alternatives for growth and business collaborations among them under Thai law, in line with international merger and acquisition practices."**

## 5. NOTICE CALLING FOR A GENERAL MEETING OF THE SHAREHOLDERS

There will be no requirement under the Amendment to publish a notice calling for a general meeting of the shareholders in a local newspaper, unless the company has share certificates issued to bearers.

Section 1175 of the Amendment requires a notice calling for a general meeting of the shareholders to be (i) sent by the acknowledgement post to every shareholder whose name appeared in the register of shareholders no less than seven days or fourteen days before the meeting date; and (ii) published at least once in a local newspaper or via electronic means as prescribed by the Ministerial Regulations if the company has share certificates issued to bearers.

## 6. MINIMUM NUMBER OF SHAREHOLDERS REQUIRED FOR A GENERAL MEETING OF THE SHAREHOLDERS

Section 1178 of the Amendment requires (i) no fewer than two shareholders; and (ii) that shareholders in the aggregate hold at least a quarter of the total issued shares of the company to constitute a quorum and to vote for any resolutions, either of their own accord or by proxies.

## 7. CAUSES OF THE COMPANY'S DISSOLUTION

A company may be dissolved by the court's decision based on many causes listed in Section 1237 of the CCC. One of the causes under the Amendment is if the number of the shareholder decreases to one.

With this Amendment, we can expect to see private limited companies remain in operation even if they only have two shareholders.

## 8. NEW CONCEPT OF MERGER OF A PRIVATE LIMITED COMPANY

The Amendment will introduce a new concept and some other developments with respect to mergers under the CCC.

Under the current version of the CCC, a merger is defined as at least two companies merging and subsequently creating a new company, while all merging companies are liquidated and dissolved and will no longer exist as legal entities. This is known as the "amalgamation concept". Under the Amendment of Section 1238 of the CCC introduces a new concept, the so-called "merger concept", in which one of the merging companies remains in existence (i.e. no new company will be created/registered) while the other merging companies will be liquidated and dissolved and will no longer exist as legal entities. Both the "amalgamation concept" and "merger concept" require a special resolution of the shareholders which must be subsequently registered with the Registrars within 14 days after the special resolution has been passed.

This new merger concept will provide room for business operators to explore alternatives for growth and business collaborations among them under Thai law, in line with international merger and acquisition practices.

With the introduction of the new merger concept, the Amendment of the CCC has also incorporated a few new sections to address, among others things (i) the circumstances where one or more shareholders oppose the merger, (ii) notification to creditors, (iii) matters to be considered and resolved by the shareholders, (iv) the timeframe in which to complete the merger, (v) quorum and voting requirements; and (vi) the registration process. Such provisions are beyond the scope of this article.

Following the enactment of the Amendment, there will be new Ministerial Regulations and/or Announcements by the competent authority to support the Amendment and provide guidelines for the public to comply with the Amendment. Our team will provide a summary of these at the relevant time.

A private limited company which fails to comply with the obligations in the Partnerships and Companies Sections under the CCC could be liable to a penalty under the Act Determining Offences relating to the Registered Partnerships, Limited Partnerships, Limited Companies, Association and Foundation B.E. 2499 (1956) ("Company Offences Act").

The Company Offences Act will be subsequently amended in response to the enactment of the Amendment. The draft of such amendment is in progress and pending publication in due course.

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If there is a registered MoA but the incorporation of a private limited company has not yet been registered before the Amendment is enforced, the Amendment allows the business operator a transition period of 180 days after the Amendment is enforced to register the incorporation of a private limited company. The validity of the registered MoA as newly imposed under Section 1099 paragraph 2 shall not be enforced if the company incorporation registration is processed within such 180 days.

Please note that the above information is provided as preliminary information only. It is not exhaustive information to be relied upon. Any interested persons are strongly recommended to further discuss and consult with qualified legal counsel for complete information before they decide to proceed with any amendments or registrations. The above information is provided based on the current information we have reviewed and accessed as of the date hereof. Additional information or any changes could be introduced or issued as circumstances dictate without prior notice. If you are interested in learning more about this article or have any questions or require further advice or assistance, please do not hesitate to contact us at [luir@wfw.com](mailto:luir@wfw.com).

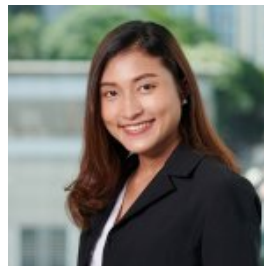
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