

New Law: Civil and Commercial Code Amendment Act (No. 23) B.E. 2565 (2022)

Government published the Civil and Commercial Code Amendment Act (No.23) B.E. 2565 (2022) ("Act") in the Royal Government Gazette on November 8, 2022. The Act will come into force on February 7, 2023.

New provisions for M&A transactions and changes to general corporate governance and procedure are among the changes in the Act.

Merger: A New Option

Businesses, prior to this amendment, could consolidate companies only through "amalgamation." Under the forthcoming Act, business operators may also consolidate by way of "merger." Both options differ.

"Amalgamation" is a consolidation of two or more companies into a new entity. All consolidating companies must dissolve, as a result. With "merger," however, one of the merging companies will survive while all others dissolve. Under both amalgamation and merger, all properties, debts, rights, duties, obligations, and liabilities of each entity will automatically transfer to the amalgamated entity or merged company by operation of law.

Key points of both amalgamation and merger under the Act:

- **Objection to Amalgamation or Merger:** Shareholders who object to the amalgamation or merger can sell their shares to a buyer at an agreeable price or the price determined by an appraiser within 14 days after receiving the buy offer. Otherwise, such shareholders will automatically become shareholders of the new entity or the merged company. It is expected the competent authority will release a ministerial regulation in due course clarifying appointment of the appraiser.
- **Creditor's Objection Period:** The merging companies must publish a resolution to amalgamate or merge and then send notice to their listed creditors within 14 days of the resolution. The creditor has a one-month period to object. If a creditor raises an objection, the merging companies can only proceed with the amalgamation or merger provided they satisfy the debt or place security for such debt.
- **Joint Shareholders' Meeting:** This meeting, called by directors of each company, must determine, among other things, the company name, objectives, share capital, allocation of shares, memorandum of association, articles of association, appointments of directors and an auditor, and other necessary matters within 6 months from the day the last participating entity passed its resolution to amalgamate or merge, unless extended by the joint shareholders' meeting (but in no case later than 1 year.)
- **Criteria for the Joint Shareholders' Meeting:** Must be held at the locality of any participating company's head office or a nearby location of any participating company. A quorum shall comprise shareholders representing at least half of each amalgamating or merging company's total shares in attendance. A resolution requires a majority vote of attending shareholders.
- **Business Handover:** The board of directors of the merging company must handover the business to the merged company within 7 days of the joint shareholders' meeting.

General Corporate Governance and Procedural Changes

Among requirements, however, qualifying Thai companies will also enjoy the following added options:

- **New Minimum Number of Promoters:** Now reduced from three to two individuals.
- **Validity of Memorandum of Association:** Reduced from 10 years to 3 years, if already registered with the Department of Business Development (Ministry of Commerce.)
- **Share Certificates:** In addition to the signature of at least one director, share certificates must be affixed with the company's seal, if the company has a corporate seal.

- **e-Meetings for Boards of Directors:** These meetings can be conducted electronically, unless the articles of association states otherwise. Directors who electronically attend will be counted towards a quorum and be entitled to vote. Other conditions apply.
- **General Meeting of Shareholders' Notice:** Publication of the notice in a local newspaper is no longer required, unless the company issued bearer share certificates. In such latter case, the company must send the notice by registered post with acknowledgement of receipt and then publish it either at least once in a local newspaper or by electronic means.
- **Quorum of Shareholders:** At least two shareholders must attend by person or proxy, and, of the total number of shares altogether, not less than one-fourth of the company's capital, to adopt a resolution.
- **Shareholder Dividends:** Dividends must be completely paid within 1 month of approval by the general shareholders' or board of directors meeting. (Prior to the Act, dividends were to be made within 1 month after approval by the general meeting of shareholders or the board of directors).
- **Court Ordered Dissolution:** The court may now order the company to dissolve if having only one shareholder, a change in accordance with the amendment of the minimum number of promoters.
- **Conversion to a Limited Company:** A limited partnership can be converted to a limited company without the requirement of a minimum of three partners, as previous to the Act.

Comments

"Merger," the major development, should allow Thai businesses to expand, collaborate and strengthen, as well as access new markets. The Act should also offer more flexibility to Thai businesses due to its changes to general corporate principles. To enjoy the flexibility, Thai companies will first need to amend their articles of association as required under the Act.

The article is intended to provide general guidance with respect to the subject matter. We will keep you updated about any related ministerial regulations government may issue. Professional advice should be sought about your specific circumstances.