

LEGAL UPDATE

Amendment to Civil and Commercial Code:

On and from 1 July 2008, the Act on amendment to the Civil and Commercial Code B.E. 2551 (A.D. 2008), which is intended to facilitate and provide more flexibility to Thailand's business system, shall be in effect. Certain provisions of the said amendment are summarized as follows:

1. Promoters to form a private limited liability company shall consist of at least three natural persons (formerly, the minimum requirement was seven persons). Also, the minimum number of shareholders in a private limited liability company is reduced to be from seven to be three.
2. The registration of the company incorporation may be completed within one day (formerly, at least nine days).
3. Notice for calling any general meeting shall be published at least once (formerly, twice) in a local newspaper **and** shall be sent to the shareholders via registered AR mail not less than seven days before the meeting date. In case of a general meeting for a special resolution, the publication in a local newspaper and sending via registered AR mail for the notice shall be made not less than 14 days before the meeting date (formerly, seven days).
4. A special resolution shall be passed by only one general meeting (formerly, two successive general meetings) having the confirmative votes of not less than 75% of the votes of the present shareholders entitled to vote.
5. When a company proposes to reduce its capital, the creditor's objection is needed to be raised within the period of 30 days (formerly, three months), and 60 days for merger (formerly, six months). The notice for such capital reduction and/or the merger shall be published at least once in a local newspaper (formerly, seven times).
6. Notice of any dividend declaration must be given in writing to each shareholder (formerly, notice of dividend declaration may be either published in a local newspaper **or** given in writing to each shareholder).
7. There is no need to submit extra copies of the memorandum and articles of association to the Registration Office at the time of registration.
8. The registration of the company is evidenced only by an Affidavit of the Registrar; a certificate of incorporation shall not be issued.
9. A Partnership can transform into a limited company without any dissolution of such partnership before incorporating the company.

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Remarks:

The company shall comply with the new provisions of the amended law accordingly. Any provisions of the current Articles of Association (AOA) of such company that is less than the requirements under the amended law shall be replaced automatically with the new provisions under the amended law. As such, AOA should be amended to be in accordance with the amended law accordingly. Nevertheless, since there is no requirement on period for registering the amendment of such AOA, as such, the amendment thereof may be made at the same time that the company wishes to register any other changes on its corporate information with the authority.

Amendment to Act Prescribing Offences Relating to Registered Partnership, Limited Partnership, Limited Company, Association and Foundation

On and from 29 June 2008, the amendment to the Act Prescribing Offences Relating to Registered Partnership, Limited Partnership, Limited Company, Association and Foundation shall also be in effect. Certain provisions of the said amendment are summarized as follows:

1. Imposing penalty and fine for not proceeding with partnership's transformation into limited company in compliance with the Civil and Commercial Code Amendment Act.
2. Imposing penalty and fine for any person who uses, for its business operation, a name of a registered partnership, limited partnership or limited company, whose name was struck off from the registration record, in order to fool public to understand that such partnership or company has not yet been deregistered.
3. Authorizing the Director-General of the Department of Business Development and/or the person(s) designated by the Director-General to settle the offences that shall be subject to only a fine punishment by imposing or authorizing any designated person(s) to impose the fine rates for such offences. In case the offender has paid the fine according to the fine so imposed with prescribed time period, the case shall be settled accordingly.

Remarks:

Please note that the late filing of application for relevant registrations as mentioned below shall be subject to a fine at the rate so prescribed in the Act (formerly, according to the Registrar's practice in the past, there was no enforcement on such penalty).

However, according to the said amended Act and a new policy on the strict enforcement of the authority, any applications to be filed after effectiveness of such amended Act (after 29 June 2008), shall be subject to a fine to be imposed by the Director-General or the designated person(s) accordingly. As far as we know, it is now during the process of issuing regulations relating to the imposing of such fine penalty.

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Following are the transactions that the Civil and Commercial Code specifies the period of time of submitting the registration:

- (1) Request for registering the company's incorporation or establishment shall be submitted within 3 months from the date of the statutory meeting of the share subscribers approving the company's incorporation.
- (2) Request for registering the appointment of new directors or the resignation of directors shall be submitted within 14 days from the date of appointment or date of resignation, as the case may be.
- (3) Request for registering the special resolution of capital increase or capital decrease of the company or the company's merger shall be submitted within 14 days from the special resolution date.
- (4) Request for registering the new Articles of Association or modification of the company's Articles of Association must be submitted within 14 days from the special resolution date.
- (5) Request for registering the company's merger shall be submitted within 14 days from the date of merger.
- (6) Request for registering the company's dissolution shall be submitted within 14 days from the dissolution date.
- (7) Request for registering the change of liquidator shall be submitted within 14 days from the date of change.
- (8) Request for registering the modification of liquidator's authority shall be submitted within 14 days from the date that the meeting has the resolution or the court has the decision.
- (9) Request for registering the completeness of the company's liquidation shall be submitted within 14 days from the date that the meeting has the resolution.
- (10) The submission of the report of partnership/company's liquidation shall be submitted every 3 months and the liquidator shall submit the report within 14 days from the date that the 3-month period expires.

June 2008