

Newsletter

CABINET APPROVES AMENDMENTS TO THAILAND'S CIVIL AND COMMERCIAL CODE

To provide more flexibility, reduce the cost of doing business in Thailand, increase the use of technology in business operations and reduce unnecessary procedural requirements, the Cabinet has approved a draft Act amending certain sections of the Civil and Commercial Code ("CCC"). The amendments contained in the draft Act address some of the issues that potential investors have faced and will enhance the image and competitiveness of the country. This will subsequently improve Thailand's Ease of Doing Business ranking issued by the World Bank.

The amendments in the draft Act relate to the place for application for registration of partnerships or private companies, the power to grant reductions and exemptions from fees for registration, applying for copies of documents and use of technology in holding board of directors' meetings. The draft Act, which passed Cabinet approval on 9 June 2020, will now be sent to the National Assembly for their consideration, approval and enactment.

Amendments to the CCC impacting partnerships and private companies approved by the Cabinet

- Notice of shareholders' meeting requirements

The draft Act will eliminate the requirement that a notice of a shareholders' meeting be published in a local newspaper. Notice will only need to be sent by registered mail with return receipt. Note that this amendment will not apply to cases where a private company has share certificates issued to bearers. In such a case, the notice must be published in a local newspaper, as well as sent via registered mail with return receipt.

- Board of directors' meetings

A Recent Emergency Decree has loosened the requirement that board members be present in person at a board of directors' meeting in order to be counted towards the quorum for such meeting. The amendment in the draft Act confirms that, unless prohibited under the articles of association of that private company, a board of directors' meeting can be held electronically, attendance by directors via teleconference or other technology is permissible, and board members attending meetings remotely can form part of the quorum. Further regulations and conditions for remote participation at board meetings are expected to be included in subordinate ministerial regulations. Note that attendance by proxy by board members is still not permitted.

- Company seals on share certificates

Previous amendments to the CCC removed the requirement that a company must affix its seal to share certificates. The draft Act re-institutes this requirement, but only in cases where a company has a seal.

- Registration of the establishment or amendment of a partnership or private company

The process for the registration of any subsequent amendment or change to the registered particulars of a partnership or private company is more flexible under the draft Act. Under the amendment, documents to be submitted for registration may be submitted to *any* Department of Business Development registration office, as determined by the Minister of Commerce, regardless of the address of a company's head office.

- Other amendments

Under the draft Act, the Minister of Commerce is empowered with the right to reduce or waive fees for registration, copies of documents, and submission of certified documents. The Minister of Commerce may also reduce or waive other fees related to partnerships or private companies. In addition, the draft Act

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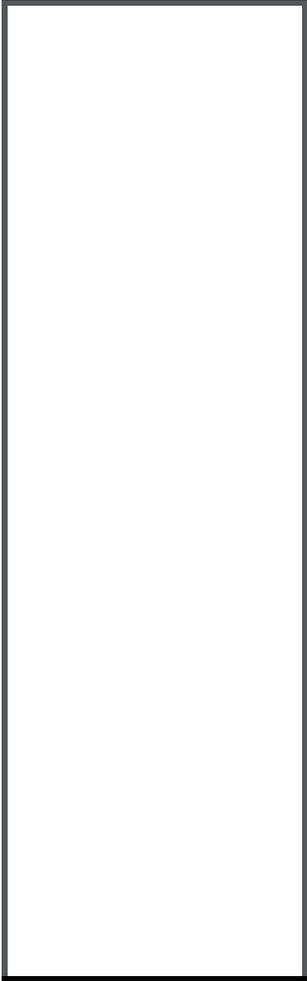
provides that a registered memorandum of association (MOA) of a company will be void if registration of the establishment of that company does not occur within three years from the date of registration of the MOA. Companies that have registered a MOA but have not registered the establishment of the company for over three years, as of the date of enactment of the draft Act, will have 180 days to register the company's establishment from the date of enactment of the draft Act. Failure to do so will render the company's MOA void.

Should you require any advice in relation to the issues raised above please contact the authors in the right-hand column.

About the authors:

Peangnate Sawatdipong is a partner in the Corporate and M&A practice group. She specializes in corporate law, and has extensive experience in: advising foreign investors on establishing private companies in Thailand; in assisting with company registrations; in obtaining foreign business licenses or certificates with the Company Registration Office, Ministry of Commerce, Board of Investment promotion, and with obtaining licenses issued by the Industrial Estate Authority of Thailand. She drafts Thai and English commercial agreements, conducts due diligence for licenses, permits and government approvals regarding major industrial projects, and regularly closes transactions at the Commercial Registration Office for a broad range of projects in Thailand. She also represents companies in share or asset acquisitions, and provides advice on work permits, visa applications, and real estate matters.

Nuanporn Wechsuanarux is a partner in the Corporate and M&A practice group. She acquired experience as a legal advisor to top-tier international law firms, and as a corporate secretary and head of legal at a Thai real estate development and hospitality public company. Her expertise includes working on a wide range of M&A transactions, joint ventures, corporate restructurings, structuring foreign investments, cross-border transactions, project finance transactions and infrastructure projects. Nuanporn has advised investors on the development and operation of projects within the power, alternative energy, mining, and petroleum sectors. In addition to her role in the Corporate and M&A practice group, Nuanporn plays an important role in the Energy and Natural Resources practice group and is the head partner for CMHM's Technology, Media and Telecommunications practice group.



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