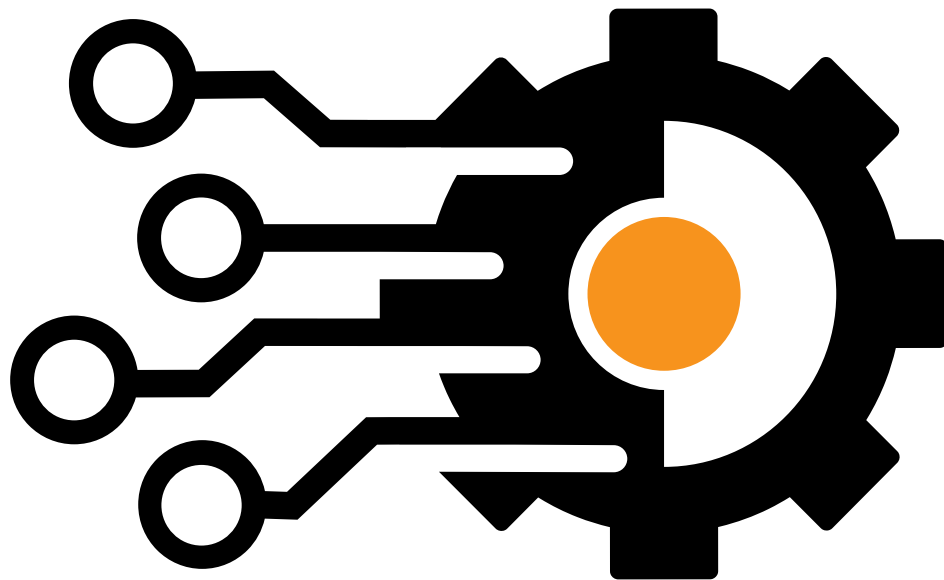


Modernized Legal Development in Thai Company Law – Can Thailand Compete with Other Countries?



The Thai Civil and Commercial Code ('TCCC') is the basic codification which combines the civil and commercial laws of Thailand and, has been in effect since 1 January 1925.

The recent significant amendments to the TCCC in 2022 are found in the Act Amending the Civil and Commercial Code (No. 23) of 2022, (the 'Act') effective 7 February 2023.

Below are the new provisions:

There were some provisions on company law in the TCCC which were deemed to be not suitable for today's era or, which needed to be updated to allow for today's

communications technology. These outdated provisions resulted in unnecessary burdens on the public in general and were obstacles to business, especially within the context of international business, as Thailand must be more competitive with other countries.

Notably, to facilitate ease of company formation, the required number of ‘promoters’ (a person who procures the formation of a company) has been reduced from 3 to 2; to provide more assurance to shareholders, deadlines have been set for dividend payments and; the principle of merger and its result have been defined.

The salient provisions of the TCCC as amended are as follows:

- 1.1 A partnership or company can be formed at the Office of Company and Partnership Registration having jurisdiction over the new company where its head office is located pursuant to Section 1016 (authority in charge of forming a partnership or company will rely on the partnership or company head office) and Section 1017 (a period for partnership or company for its registration or publication should be computed from the time when notice or publication reaches the head office) This is clearer than the old provision which did not take into consideration the location of the head office.
- 1.2 The Minister of Commerce has the authority to fix, decrease, adjust, or cancel the fees for registering a partnership or company or associated fees depending on transaction type (Section 1020/1 as amended set out additional power vested in the Minister of Commerce to adjust fees).
- 1.3 Only 2 promoters will be required, instead of 3, for the formation of a private limited company, under Section 1097 as amended, to ease company formation.
- 1.4 A new company shall be registered within 3 years after the memorandum of association (MOA) is registered. The MOA including the approved corporate name reservation, is a brief document which reserves the proposed name of the new company and states the basics of who is involved and the company’s business objectives. If the new company fails to come into existence and is not later registered within 3 years, the MOA has no longer any legal effect (Section 1099 as amended). The amendment in this respect wants applicants to actually do what they state they are going to do within 3 years. Also, because the MOA including the approved corporate name reservation, functions as a process for

reserving a new company name, any subsequent applicant would be blocked from reserving the same name. However, there were many MOAs submitted in which it became apparent that the promoters had failed to form the company within a reasonable time or, had abandoned their plans. Nonetheless, the MOA remained on file and blocked any good faith applicant from reserving the same name. This new, 3-year deadline removes that block at the deadline.

- 1.5 At the stage of statutory meeting, a company can set out procedures to solve problems or conflicts that cannot be resolved in the company's articles of association (bylaws) (provisions allowing for deadlock resolution and the procedures to be followed for solution is inserted into Section 1108 (1) as amended).
- 1.6 Every certificate of shares shall bear the seal of the company (if applicable) (Section 1128 paragraph 1 as amended explicitly sets out that a company having a company seal shall bear the seal in the share certificate).
- 1.7 A director may use any method of technology communications in lieu of attending in person the directors' meeting (Section 1158 as amended and Section 1162/1 as added so as to follow the French company law to allow director to attend the BoD meeting through any method of technology communications).
- 1.8 Notice convening a shareholders' meeting shall be served on all shareholders whose names appear in the shareholders' register by no less than 7 days (14 days for a special resolution) before the meeting is held. This notice shall no longer be required to be published in a local newspaper. However, in the case of bearer shares (a share in a company where ownership is evidenced by the physical certificate rather than entry on the register of members), a notice convening a shareholders' meeting must still be published one time in a local newspaper or through electronic media (to be detailed in the Ministerial Regulations).
- 1.9 Shareholders' meeting must be in attendance by at least 2 shareholders or by proxy (Section 1178 as amended requires that at least 2 shareholders or proxy attend to meet and qualify a meeting under Thai law).
- 1.10 Dividend payment must be made by 1 month after resolution is passed by the general meeting of the shareholders or the BoD meeting. (Section 1201 as amended explicitly sets out that dividend must be paid by 1 month to protect minority shareholders)

- 1.11 If there is only 1 shareholder left, the company must be dissolved. This is consistent with the new requirement for 2 promoters.
- 1.12 Amalgamation under Sections 1238-1243 of the TCCC has been significantly changed. Apart from amalgamation of two companies resulting in one surviving and one dissolved company, a merger (a legal consolidation of two business entities into one) is now provided for in the TCCC. This follows French and Delaware state law (Section 1238 – Section 1243 as amended).

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