

PwC Legal Insight # 02/2022

Legal Update

Issued Date: 15 December 2022



CCC amendments to limited companies' corporate governance and merger schemes

The following report may be of interest to :

All clients

Summary :

The Thai Royal Gazette has announced the Amendment to the Thai Civil and Commercial Code BE 2565 (Amended CCC) which will be in effect on 7 February 2023. The Amended CCC changes certain requirements relating to limited companies' corporate governance and merger schemes. The significant changes are summarised as follows.

Corporate governance

- 1. Minimum number of promoters and shareholders (CCC Section 1097):** The minimum number of promoters of an incorporation has been reduced from three to two.
- 2. Validity of the registered Memorandum of Association (MOA) (CCC Section 1099):** Currently, there is no deadline for validating a registered MOA, and this has kept some companies from being able to use the company name they'd reserved during their MOA registration. To solve this problem, the Amended CCC requires a company to be incorporated within three years of its MOA registration or else the registered MOA will be invalid.
- 3. Share certificates (CCC Section 1128):** In addition to their signature, at least one director must now affix the company seal (if any) on every share certificate.
- 4. Electronic meetings of the Board of Directors (CCC Section 1162/1):** Unless prohibited by the Articles of Association, Board of Directors meetings can be held electronically. However, the electronic meeting must comply with the law on electronic meetings.
- 5. Notice calling for a shareholders meeting (CCC Section 1175):** Currently, a notice calling for a general meeting of shareholders would need to be (1) published in a local newspaper and (2) sent by post with acknowledgement of receipt by every shareholder. Under the Amended CCC, this notice no longer needs to be published in a local newspaper unless the company has bearer shares. In this case, the notice must still be published either in a local newspaper or via electronic media, and the Ministry of Commerce will later prescribe the criteria for publishing it via electronic media.

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6. **Quorum of a shareholders meeting (CCC Section 1178):** The current CCC doesn't specify the number of attendances required to hold a shareholders meeting. Under the Amended CCC, to allow voting for any resolutions, a general shareholders meeting must be attended by at least two shareholders, whether in person or by proxy and representing at least one-fourth of the company's capital.
7. **Dividend payments (CCC Section 1201):** The current CCC doesn't clearly state that the dividend payment process must be completed within one month from the date of the Board of Directors/shareholders meeting in which the resolution was made, but the amendment of Section 1201 clearly specifies that the payment process must be completed within that time.
8. **Causes of a company's dissolution (CCC Section 1237):** The court can render an order to dissolve a company with only one shareholder (formerly less than three shareholders). As a result, a limited company is required to maintain at least two shareholders at all times.

Merger

The current CCC only recognises the concept of company 'amalgamation'. An amalgamation is a combination of two or more companies to form a new limited company. The amalgamating companies will be dissolved, and the new company will be incorporated.

The Amended CCC Section 1238 added the 'merger' combination concept for limited companies. A merger is a combination where two or more companies merge and only one merging company survives while the others are dissolved (no new company will be incorporated).

Upon completion, CCC Section 1243 specifies that new amalgamated company or surviving company from a merger will take all assets, liabilities, rights, obligations and responsibilities held by the companies involved.

The Amended CCC has also incorporated and revised the procedures for amalgamations or mergers as follows:

- buyout if any shareholder objects to the amalgamation or merger (CCC Section 1239/1)
- reducing the creditor's objection period from 60 days to one month from the date of receiving notice (CCC Section 1240)
- consideration by shareholders for the corporate matters, such as the name, objectives, share capital, MOA and Articles of Association (CCC Section 1240/1)
- seven day timeframe to deliver each company's business, assets, accounts, documents and other evidence to the amalgamated/merged companies and 14 day timeframe to register the amalgamation or merger (CCC Sections 1240/3 and 1241).

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