THAILAND

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Thai Corporate Law amendment

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The most welcome move by the Thai Government recently was an amendment legislated by parliament to overhaul the country's corporate law which is contained in a title of the Civil and Commercial Code. The amendment (published in the Government Gazette on 3 March 2008 and to become law on 1 July 2008) removes the requirement that a limited company comprise at least 7 shareholders.

In effect, the amendment provides that at least three persons can be shareholders in a limited company.

In fact, the reduced number of three promoters can facilitate the process of incorporation more practically. It may effectively dispenses with the illegal practice of employing nominees, sometimes as many as six out of the seven required shareholders, to hold at least one share each, leaving the majority of the shares of equity held by the real single investor.

Many believe that when the amendment becomes law in early July, there will be a deluge of applications to the Ministry of Commerce in Thailand for transfer of single shares to others within the company so that the number of shareholders remains less than seven. Companies will be able to trim the number of shareholders to more accurately reflect the company's equity investors. Buy-outs and buy-ins may take place as a result.

Further, incorporation can be completed within one day instead of two weeks. Under the new amendment, the directors may apply for registration of both the memorandum of association and the company concurrently on the same day. Other requirements are also to be met, such as full subscription to the registered share capital, approval of necessary transactions at the statutory meeting before the company's management is handed over to the directors of the company, and calls for full payment of the subscribed shares.

The mandatory requirement for the service of notices prior to a general meeting of the shareholders has also been eased. Publication of the notice needs to be made once, instead of twice, in a local newspaper.

Another major revamp under the amendment is the process of voting a special resolution. Under the amendment, only one general meeting, instead of two successive meetings, is now required to approve a special resolution on a vote of not less than three-fourths of the votes of the shareholders attending and voting at the meeting. Prior to the amendment, the voting mechanism was as follows: at the two successive meetings, a resolution was passed at the first meeting by not less than three-fourths of the votes and confirmed at the second meeting by a majority of not less than two-thirds of the votes. In practice, to do away with the time-consuming process, some of the required special resolutions were therefore backdated to shorten the process.

The matters that require a special resolution include amendment to the memorandum or the articles of association, capital increase and decrease, dissolution of the company, merger, and allocation of new shares as fully or partially paid-up other than by money.

To reduce capital, the company is now required to publish its capital reduction at least once in a local newspaper. Previously, such reduction was required to be published seven times. As regards a merger, a one-time publication is substituted for the seven-time newspaper advertisement, and the period for a creditor's objection is set at 60 days instead of six months.

Finally, an existing partnership can now be converted into a limited company without the need for the partnership first to transfer its asset to an existing company and be faced with tax-related exposures. Basically, a partnership of at least three partners can qualify for the conversion.

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