

Partnership and corporate law upgrades

‘Why seven shareholders?’ is a question businessmen have pestered corporate lawyers with for years, but it is about to become a thing of the past. The Thai government, prodded by the Commerce Ministry, is adopting major amendments to several partnership and corporate law provisions with the aim to simplify or do away with unnecessary statutory procedures under the Civil and Commercial Code. The amendment was published in the *Government Gazette* on March 3, 2008 and will be effective on July 1, 2008.

Among other things, the mandatory seven minimum shareholders in a limited company shall be reduced to three. The new rule will benefit both new and old companies.

Having only three persons instead of seven sign the Memorandum of Association (MoA) will make the incorporation process easier and faster. A senior Commerce Ministry official claims that a fringe benefit to existing companies will be that nominee shareholders holding minority shares (typically one share each) will have a chance to make an exit. Many companies are getting ready to reduce the number of their shareholders.

Unlike the number seven, which has never been clarified, there is an explanation as to why at least three shareholders must be maintained, i.e. the requirement of majority number of shareholders still exists in certain statutes.

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Another welcome change is that the process of incorporation which takes at least nine days under the present law can be done in one day under the new law. The new law provides for one-day registration of both the MoA and the company together if all requirements are met at the statutory meeting and all the papers are in order. This is a step forward that will put Thailand more in line with international practice.

The rules about shareholders' resolutions are simplified. Currently, a special resolution is required for important matters such as change of company name, address from one province to another, capital, objectives, or Articles of Association, which must be adopted and then confirmed by two successive shareholders' meetings. Said double approval takes at least 21 days and is the key reason why in practice it has been ignored and circumvented by backdating meetings.

◆ The new amendment will allow the passing of a special resolution by only one shareholders' meeting by at least three-quarters of the votes of the shareholders in attendance and entitled to vote. It is interesting to note that calling a shareholders' meeting has always required prior notice either by publication twice in a local newspaper or delivery to all shareholders via

registered post.

It came as a surprise to the Commerce Ministry that this provision was altered during the draft approval procedures such that it will take “both” newspaper publication and mail delivery to call a shareholders' meeting once the law is enacted. Doing otherwise cannot be agreed under a company's Articles of Association. Many have criticised that this is impractical and inconsistent with other relaxations. The drawback foreseeable at this point is the extra cost that will be incurred.

Another change is that a company can no longer opt to inform its shareholders of dividend declaration by means of publication in a newspaper instead of delivery by mail. The first will be removed under the new amendment, making it mandatory to individually notify shareholders about dividends by mail. It is hoped that this will fix the current loophole and uphold the right of shareholders under the law.

Although reduction of a company's capital and merger of two companies are not common occurrences, the processing and timeframe are improved. Reduction of capital shall require only one-time publication in a local newspaper (instead of seven times) plus 30 days (instead of three months) objection period for creditors. To merge

two companies, publication in a newspaper is reduced from seven times to one, and the objection period for creditors is reduced to 60 days instead of six months.

Finally, the new law makes it possible for an existing partnership to be converted to a limited company, subject to certain formalities. A partnership is nowadays not a popular form of business organisation, as liability has increasingly become a concern to business owners, both Thais and foreigners. A great number of medium-to-large partnerships are opting to become a limited company with the aim of going public in the future. Without a legal channel for such transformation, partners would have to transfer the business and assets of a partnership to a new company, hindered by many issues, especially tax implications on the transferring partnership and/or the recipient company.

Even though cutting down and shortening some procedural redundancies will not change the easy and common way of practice in Thailand, such as backdating and paper meetings, one cannot really argue that this is not a real upgrade we all have been waiting for.

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