

## The single-shareholder companies law and its expected impact on SMEs

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In 2008, amendments to the Civil and Commercial Code (CCC) reduced the minimum number of shareholders required to incorporate a limited company to three from seven. This change seemed to encourage new business registration, as the number of newly incorporated juristic persons in Thailand has increased at an average rate of 8% per year since then except for 2009 and 2014.

The Business Development Department counts 400,000 limited companies in Thailand, with 60,000 new ones expected to be registered this year. More than half these companies have less than 1 million baht in registered capital and a third between 1 and 10 million baht. In the first quarter alone, 17,309 small and medium-sized enterprises (SMEs) were registered and operating as limited companies.

All of these limited companies have at least three shareholders, but in practice there is often only one shareholder who truly owns and manages the company. When incorporating a limited company, this shareholder can incur unnecessary costs as he or she attempts to find at least two others to form the company.

For this reason, the department is now studying the viability of incorporating companies with a single shareholder. It has sought advice from Chulalongkorn University's law faculty, which has assembled a research team.

This team has considered the laws of other countries including Japan, Singapore, Britain, the US and Vietnam. As well, the model law of the UN Commission on International Trade Law in the past required more than one shareholder to incorporate a limited company, as companies were established by contractual relationship.

However, in line with the evolution of business customs, court rulings or amendments to statutory law, single-shareholder companies are now permitted in many jurisdictions provided that the principal concepts of a limited company remain unchanged. These concepts include: (i) a separate legal entity; (ii) limited liability; (iii) control by shareholders; and (iv) transferability of shares.

The research team released a tentative draft law named the Incorporation of a Company by a Single Shareholder Act for a public hearing in August. It invited both government agencies and private-sector entities to provide input.

It was revealed the new single-shareholder company scheme would be a separate enactment from the CCC, under which any laws and regulations that applied to a limited company would also apply to a single-shareholder company as long as they did not contradict the nature of a single-shareholder company.

The key points of the draft are as follows:

Any one person or juristic person can be a promoter and file an application to incorporate a limited company.

There is no minimum par value.

The single shareholder can hold a statutory meeting and pass resolutions, and hold an ordinary meeting or extraordinary general meeting and pass resolutions, without the need to call for a shareholders' meeting.

The shareholder is not liable, directly or indirectly, for company debt with other persons solely on the basis of being the shareholder of the company (which is made clearer than as stated in the CCC).

For any transaction between the company and the shareholder that is not the normal business of the company, the director shall cause such transaction to be made in writing and record all agreements in the minutes of the directors' meeting (a new good governance measure).

If the company's sales volume or income does not reach the criteria set in the ministerial regulations, the company may not need to audit its books. There is currently no cut-off figure for the amount the company can waive for auditing.

The company can amalgamate with other single-shareholder companies and transfer all shares to one shareholder.

A limited company formed under the CCC can be converted into a single-shareholder company and vice versa.

The single-shareholder company programme may encourage the registration of SMEs as limited companies, as they would have greater access to financial resources and lower compliance costs compared with limited companies incorporated under the CCC.

As well, other stakeholders such as suppliers and creditors will also benefit from the legal status as a registered limited company, which, for example, provides more convenience to review the status of a single-shareholder company through the Business Development Department.

The draft is currently being reviewed by the department's legal division. In all likelihood, it will be proposed to the National Legislative Assembly, at which time it should become clearer whether the new law will, in practice, benefit and promote SMEs.