



LSH Newsletter September 2009

Proposed Amendments to the Civil and Commercial Code

On 18 August 2009, the Cabinet approved the draft bill relating to the amendments ("**Proposed Amendments**") to the Civil and Commercial Code of Thailand ("**CCC**"). The Proposed Amendments aims to amend certain provisions of the current Partnerships and Companies Chapter under the CCC in order to make it more practical and less burdensome for the business operator in relation to the business operation of the private limited liability company caused by the Amendments in 2008.

This newsletter summarizes the essence of the Proposed Amendments according to the version approved by the Cabinet on 18 August 2009.

Registration of Memorandum of Association (Section 1099)

The registration of the Memorandum of Association ("**MOA**") shall be conducted by the promoters of the to-be-established company. At present, once the MOA has been registered, there is no time prescription as to when the company must be incorporated. It is to say that the company can be established either anytime after the 7-day-period once the MOA has been registered, or the same day the MOA has been registered with the Ministry of Commerce ("**MOC**").

The Proposed Amendments propose that in the case where the MOA has been registered with the MOC Registrar and the company has not been incorporated within 10 years from the date such MOA has been registered with the MOC Registrar, such MOA will be void. The provision concerning the liability of the promoters under the existing CCC will apply, i.e. the promoters will be jointly and unlimitedly liable for all obligations and disbursements which have not been approved by the statutory meeting.

Board of Directors' Meeting (Section 1162/1)

Currently, the directors of the company must attend the Board meeting in person (due to an internal policy of the MOC, proxy and circular Board's resolutions are no longer allowed or accepted), at the designated time and place fixed by the Board.

Under the Proposed Amendments, directors must attend the meeting as stipulated in the invitation letter to the Board meeting. However, if the Articles of Association ("**AOA**") of the company allow the Board meeting to be conducted through an information technology system, whereby the directors can discuss and exchange opinions in relation to the agenda set forth for the Board meeting, such system shall have the function of being able to verify the identities

of the directors attending the meeting. The said Board meeting conducted through an information technology system will be acceptable to the MOC and regarded as a proper meeting conducted by the Board.

In any event, the MOC has not defined a Board meeting conducted through an information technology system. According to unofficial advice given by an MOC official, the Board meeting conducted through telephone conference and video conference should be acceptable to the MOC. This provision is pending an official clarification from the MOC.

Notification to Shareholders for General Meeting (Section 1175)

Currently, an invitation letter for every general meeting must be both sent to every shareholder by post with return receipt and published at least once in a local newspaper not less than seven days before the meeting date, and not less than 14 days for the meeting in which a special resolution will be tabled.

Under the Proposed Amendments, an invitation letter for every general meeting must still be sent to every shareholder (who is not a holder of a bearer share certificate) by post with return receipt not less than seven days prior to the meeting date, and not less than 14 days prior to the meeting in which a special resolution will be tabled, but the publication of such invitation letter in a local newspaper will no longer be required. A company which issues share certificates to bearers is, on the other hand, still required to publish an invitation letter for every general meeting in a local newspaper.

Conclusion

According to the Proposed Amendments:

- A company must be incorporated within the period of 10 years commencing from the date of the registration of the MOA.
- The Board meeting may be conducted through an information technology system, as stipulated in the AOA of a company.
- Publication of an invitation letter for every general meeting of a company in a local newspaper will no longer be required, except for the company which issues share certificates to bearers.

For more information,
please contact:

Sunpasiri Sunpa-a-sa
Partner
Email: sunpasiri@lshorizon.com

Tel: 662 627 3443
Fax: 662 627 3250



**THERE IS ALWAYS A
SOLUTION.**

LS Horizon Limited was founded on the vision of a Thai-based law firm delivering international quality legal services.

Today, LS Horizon Limited has more than 40 attorneys, many of whom have previous experience at top-tier international law firms in Thailand and overseas.

LS Horizon Limited deliberately focuses on providing legal services in select practices areas where we have expertise and are considered to be at the forefront.

Our current practices areas are

- Mergers and Acquisitions,
- Projects,
- Capital Markets,
- Corporate Real Estate,
- Banking and Finance,
- Private Equity and Foreign Direct Investment,
- Administrative and Constitutional Law,
- Dispute Resolution and Employment and Labor.

Important Note and Disclaimer

The content of this Newsletter is prepared as of September 2009.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.