



## **TMI EYES No. 1: How Will the Recent Amendments to Thai Corporate Law Affect Us?**

TMI Associates Bangkok Office is honored to have the privilege of joining this journal as of 2023. TMI EYES aims to evaluate and analyze legal- and business-related matters as interpreted through our firm's perspective. In this first article, we share our views on the amendments to the Thai Civil and Commercial Code (TCCC) and how these amendments will affect everyone.

### **Amendments to TCCC**

Effective as of February 7, 2023, the major amendments include changes concerned with the requisite number of shareholders, a new breed of amalgamation, teleconferencing, the abolishment of newspaper publications, etc. We would like to share our thoughts on a few of the amendments as follows, from a legal and business perspective:

### **Reduction in Minimum Number of Shareholders from Three to Two**

The most noteworthy amendment concerns the reduction in the mandatory minimum number of shareholders of a private company from three to two shareholders. As we are already aware, it has often been the case that companies end up appointing a third person/company solely to satisfy the required 3-shareholder minimum.

After the announcement of this reduction, TMI receives numerous inquiries on whether or not a company should consider reducing the number of its shareholders from three (or more) to only two shareholders. We would first like to state that there is no universal answer to that question, as it will vary from company-to-company, and we will instead provide the following observations:

At first glance, the reduction in the mandatory minimum number of shareholders from three to two will enhance flexibility in company management, e.g. a lower quorum requirement and a less complicated/hostile voting process, etc. Some issues may no longer be relevant, e.g. how a company should declare and distribute dividends; does the company need to actually pay dividends to the third shareholder, or can the third shareholder forfeit their right to receive dividends; are the forfeited dividends considered taxable income to the third shareholder? How can companies recoup dividends from the third shareholder? What happens if the third shareholder dies and how can the company take their shares back? Such questions may no longer need to be answered with this new reduction.

Nevertheless, TMI points out a few other considerations which need to be taken in this reduction in the minimum-required shareholders. Companies should note that to constitute a "meeting," at least two persons must be present (i.e., at least two directors in a board of directors meeting, and at least two shareholders in a shareholders meeting). In the event that a given company only has two directors or two shareholders, there is a risk that a meeting cannot be conducted if even one director or shareholder is absent. This situation would be more likely to occur if a given company has two groups of investors and one party decides not to attend meetings as a means of avoiding consideration of and voting on certain issues. In such a case, a deadlock will result.

Furthermore, readers should note that when a company's articles of association allow the members to vote by a show of hands, regardless of the number of shares, there will only be two members with voting rights and this will also lead to a deadlock if no unanimous decision is made.

Therefore, companies should carefully consider a range of aspects before deciding on whether or not to reduce the number of shareholders to two.

### **Addition of Amalgamation Type and its Legal Effect**

The amended TCCC provisions also allow for an amalgamation (merger) of businesses through "absorption." This provision will provide an incentive for companies to merge their businesses through such means rather than to merge them through consolidation, i.e. at least one company will continue to exist under an absorption, and thus that company can retain, and inherit all of its assets, debts, rights, and responsibilities (e.g. licenses, permits, land, tax breaks, employees, etc.) from the amalgamating companies. This should ease the issues existing under the current amalgamation-through-consolidation provisions wherein the amalgamating companies need to obtain consent from their creditors, employees, etc., and both companies are also likely to lose many of their licenses, privileges, tax breaks, etc. in the process.

In addition, the new TCCC expands on the definition of amalgamation to specify that all rights and responsibilities of the amalgamating companies will be transferred to the new company. Hopefully, this will broaden the competent authorities' discretion in allowing a wider range of license and permit transfers to go through.

For tax purposes, TMI observes that the current provisions under Section 74 of the Thai Revenue Code should still be sufficient to support mergers through absorption and should provide the same tax benefits to merging companies without the need for any amendments to the Revenue Code.

### **TMI's View**

The new amendments to the TCCC should provide flexibility to companies in managing their corporate structures and business affairs. However, they may not be applicable to every company. Therefore, TMI recommends that companies undertake thorough research before taking any actions in order to ensure that companies can take advantage of the new provisions with the fewest unintended consequences.

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