TMI EYES

TMI Associates (Thailand) Co., Ltd.

TMI Eyes No. 38: Can Director Changes Be Registered Without the Existing Authorized Director's Signature?

As a general rule, an application for registration of a company with the Department of Business Development, Ministry of Commerce (“**DBD**”) must be signed by the director authorized to act on behalf of the company according to its existing registration records.

In practice, disputes among shareholders or directors may arise in connection with the appointment or removal of directors. In such situations, the director whose removal is being proposed may refuse to sign the registration application, raising the question of whether the company can proceed with the registration despite the absence of the authorized director’s signature.

The Regulation of the Central Partnership and Company Registration Office on Partnership and Company Registration B.E. 2561 (2018) (the “**Registration Regulation**”) addresses this issue by providing an alternative mechanism for registrations relating to directors and directors’ signing authority where obtaining the signature of the existing authorized director is not possible.

Registration Based on Board Resolutions

Where the proposed registration is based on a board resolution appointing or removing a director or changing directors’ signing authority, the registration may proceed without the signature of the existing authorized director, provided that the application is signed by a director appointed pursuant to the relevant resolution and is accompanied by supporting evidence relating to the board meeting. Such evidence generally includes the notice convening the board meeting, evidence that notice was given to all directors, the minutes of the relevant board meeting containing the resolution and attendance records.

Registration Based on Shareholders’ Resolutions

The Registration Regulation also permits registration based on shareholders’ resolutions without the signature of the existing authorized director. The required supporting documents vary depending on the circumstances in which the shareholders’ meeting was convened.

- **Board-convened shareholders’ meetings:** Where the shareholders’ meeting was convened by the board of directors in the ordinary course, the applicant must provide evidence demonstrating that both the board meeting and the shareholders’ meeting were properly convened and conducted. Such evidence generally includes meeting notices, proof of delivery, minutes of the relevant meetings and attendance records. Where required by law or the company’s articles of association, evidence of publication of the meeting notice in a newspaper must also be submitted.

- **Shareholder-requisitioned meetings:** Where shareholders holding not less than one-fifth of the company's shares requested that the board convene a shareholders' meeting, the applicant must additionally provide evidence demonstrating that such request was properly made and received by the board, in addition to the documents relating to the board meeting and shareholders' meeting.

- **Meetings convened directly by shareholders:** The most extensive documentary requirements apply where shareholders holding not less than one-fifth of the company's shares exercise their statutory right to convene the shareholders' meeting themselves. In such circumstances, the applicant must provide evidence of the shareholders' request to the board and evidence that such request was delivered to or received by the board, the notice convening the shareholders' meeting and proof that such notice was delivered to shareholders, the minutes of the shareholders' meeting, and attendance records of the shareholders who attended the meeting. Where required by law or the company's articles of association, evidence of publication of the meeting notice in a newspaper must also be submitted.

Notification by the Registrar

Where an application is filed without the signature of the existing authorized director, the registrar must notify the affected persons by registered mail. If no objection is filed within fifteen days from the date of notification, or if the objection is unsupported by the available evidence, the registrar may continue considering the application. However, where the available evidence is insufficient to determine the matter, the registrar may defer consideration pending a court judgment or order.

TMI's Notes

Although company registration applications must generally be signed by the existing authorized director, the Registration Regulation provides an important mechanism for situations in which the existing authorized director refuses or is unable to sign the registration application.

Companies seeking to register changes to directors or directors' signing authority should ensure that the relevant board or shareholders' resolutions have been properly adopted and that sufficient documentary evidence is available to support the application. Failure to comply with the prescribed procedures may result in delays or the registrar deferring consideration of the application pending court proceedings

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