

Amendments to the Civil and Commercial Code of Thailand



The Civil and Commercial Code Amendment Act (No. 23) B.E. 2565 (2022) (the “Act”) was published in the Government Gazette on November 18th, 2022. The Act will come into force ninety (90) days after its publication in the Government Gazette. This falls on February 16, 2023.

The act makes several changes, some of them quite significant, to the existing Civil and Commercial Code (“CCC”). The interesting changes include the following:

- ✓ The minimum number of promoters and shareholders (“SHs”) required for private limited companies (“companies”) has been reduced from three (3) to two (2).
- ✓ The CCC now allows directors to attend Board of Director (“BOD”) meetings remotely via video conferencing systems.
- ✓ The CCC now recognizes the concept of a “merger,” whereas, prior to the amendment, it only recognized the concept of an “amalgamation.” While an



amalgamation of two or more companies results in a new company ($A + B = C$), with the amalgamating companies being dissolved, a merger results in one of the merging companies (either A or B) surviving the transaction. In this scenario, the surviving company will take over the absorbed company's assets, rights, and liabilities.



Figure 1. Amalgamations vs mergers.

- ✓ Acquisitions by contract remain unaltered:
 - (a) **Asset deals**, whereby Company B sells or transfers parts or all its assets and liabilities to another Company A (and Co B may or may not dissolve);
 - (b) **Share deals**, whereby Company A acquires all or most of the shares of Company B, thereby acquiring control over Company B.

The main amendments to the CCC as summarized below.

Subject Matter	Newly introduced / amended clauses	Commentary
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Legal notice timing of publications in foreign countries.

“Section 1017: If a fact or information to be registered or published happens in a foreign country, the period of registration or publication thereof shall be computed from the time when the said fact or information arrives at the principal business office of the partnership or company.”

Minimum requirement of 2 promoters.

“Section 1097: Any two (2) or more persons may, by subscribing their names to a memorandum of association and otherwise complying with the provisions of this Code, promote and form a limited company.”

Now, only two (2) promoters are required for the formation of a company instead of three (3).

Director & Shareholder deadlock resolution procedure now required.

“Section 1108: (1) The adoption of regulations of the company; however, it shall also specify a procedure for the rectification of problems or disputes, which cannot be settled or resolved amongst the directors or the shareholders.”

Now, companies will have to specify, in the articles of associations (“AOA”), resolution procedures for deadlocks amongst directors or shareholders. Under the previous provision, there was an option to stipulate this in the AOA.

Company seal,
optional

“Section 1128: Every certificate of shares shall be signed by at least one director and shall bear the seal of the company, if any.”

Previously, Section 1128 required that the company seal be set on share certificates, implying that companies were required to have a company seal to issue share certificates to shareholders (Section 1127).

The amended Section 1128 implies that companies do not necessarily need to have a company seal.

Full virtual BOD meetings

“Section 1162/1: A board of directors meeting may be conducted by any means of technological communication, where the directors are not required to appear in person at a meeting, except when prohibited by the articles of association of the company. A board of directors’ meeting held by means of technological communication under paragraph one shall be in accordance with the law governing electronic meetings.*

It shall be regarded that the directors using the communication under paragraph one has attended the board of directors’ meeting and shall be counted for a quorum and entitled to cast votes at such meeting as well.”

Now, the CCC explicitly allows directors to attend BOD meetings remotely via video conferencing systems* etc.

*See “Emergency Decree on Electronic Meetings B.E. 2563 (2020)”



- Newspaper publication requirements (SH meetings)

“Section 1175: A notice summoning general meetings shall be sent by post with acknowledgment of receipt thereof to all shareholders whose names appear in the register of the company not later than seven (7) days before the date fixed for the meeting; however, in the event the company has shares where a share certificate is issued to the holder [registered shares, as opposed to bearer shares], the notice summoning general meetings shall be published in a local newspaper at least once, or on an electronic media according to the procedures prescribed in the Ministerial Regulations not later than seven days (7) before the date fixed for the meeting. In the case the notice summoning general meetings is for a special resolution to be made by the general meeting, such shall be made not later than seventeen (17) days before the date fixed for the meeting.”

Now, unless a company issues bearer shares, it is no longer necessary to publish invitations to shareholders' general meetings in a local newspaper.

- Special Resolutions, 17 day summoning requirement

Also, to pass a special resolution, the notice for summoning a shareholder's general meeting is now extended to seventeen (17) days (from the original fourteen days).

Minimum number
of SH at SH
meetings (Now 2)

“Section 1178: A general meeting must be attended by shareholders, or proxies at not less than two persons and of the total number of shares altogether not less than one-fourth of the capital of the company in order to pass a resolution in any matters.”

Previously, a general shareholders’ meeting could have been validly convened even if the number of shareholders in attendance was one (1) single shareholder. Now, at least two (2) shareholders (or their proxies) must attend the meeting.

Stricter dividend
payment timeframe

Paragraph four (4) of Section 1201

“(4) Payment of dividends shall be completed within one month from the date of the resolution of the general meeting or of the board of directors, as the case may be.”

Now, the dividend payment must be completed (not merely sent out) within one month of the shareholders’ resolution date. Before, the word “completed” did not exist in this provision.

Amalgamation

The entire section^[1] on the amalgamation of private limited companies has been replaced by the following.

Mergers now
recognized

A + B → A

“Section 1238: Limited companies may be amalgamated by a special resolution. Two or more companies may be amalgamated under any one of the following descriptions:

(1) Amalgamation as a new company and the amalgamating companies shall lose their juristic person status.

(2) Amalgamation whereby one company still retains its juristic person status and other amalgamating companies lose their juristic person status.

Now, one company will be able to merge with (and absorb) another company (e.g., A + B → A). This means that A will be entitled to the assets, rights, and liabilities of B.

Previously, the CCC only recognized amalgamations, whereby all the rights and liabilities of both merging companies would transfer to a newly incorporated company by operation of law (e.g., A + B → C).

Amalgamation:

Special resolution
registration
timeframe

Section 1239: The special resolution by which an amalgamation is decided must be registered by the company within fourteen (14) days from the date of resolution.”

This requirement is upon each amalgamating company.



Amalgamation:

Protection
of objecting SHs

“Section 1239/1: Upon there having been passed a special resolution for amalgamation of companies, but a shareholder attending the meeting raised an objection to the amalgamation, the company must arrange for the buying of shares of the said shareholder at an agreed price, or in the event an agreement thereto cannot be reached, the price fixed by an appraiser shall apply. If said shareholder refuses to sell shares within fourteen (14) days from the date of receiving the buying offer, the company may continue proceeding with the amalgamation, and it shall be regarded that said shareholder is a shareholder of the amalgamated company. The appointment of the appraiser under paragraph one shall be in accordance with the bases, procedures, and conditions prescribed in Ministerial Regulations.”

Objecting SHs can now sell their shares.

The appraiser’s valuation will be final.

Amalgamation:

Creditor protection

“Section 1240: Upon there having been passed a special resolution for amalgamation, the company must notify the creditors of said resolution in writing within fourteen (14) days from the date of the resolution, as per the names appearing in the list of the company as of the date of the meeting of shareholders for passing the amalgamation resolution, stating therein the period of sending an objection thereto within one (1) month from the date of receipt of said notice of the resolution, and the company shall publish said resolution on a daily wide-circulation newspaper within the period of fourteen (14) days as well.

If an objection is raised, the company cannot proceed with the amalgamation unless it has satisfied the claim or given security for it.”

Creditor protection

procedures are stipulated here.

Amalgamation:

Joint SH meeting
of all amalgamating
companies.

“Section 1240/1: Upon the proceedings under Sections 1239 and 1240 having been carried out, the directors of the amalgamating companies shall summon meetings of shareholders of their companies to consider the following matters jointly:

- (1) The name of the amalgamated company, which may be a new name or the old name of any of the amalgamating companies.*
- (2) The objectives of the amalgamated company.*
- (3) The share capital of the amalgamated company, which share capital must not be less than the share capital of the old companies duly amalgamated.*
- (4) The allocation of shares of the amalgamated company to the shareholders; however, the provisions of Section 1222 shall not apply thereto.*
- (5) The memorandum of association of the amalgamated company.*

Requirements to hold a joint SH meeting, and the agenda which must be resolved upon.



(6) The articles of association of the amalgamated company.

(7) The election of directors of the amalgamated company.

(8) The appointment of the auditor of the amalgamated company.

(9) Other matters necessary for the amalgamation, if any.

The meetings referenced above shall be completed within six (6) months from the day any company most recently passed a resolution for amalgamation, except where the meeting under this Section has passed a resolution that the period of time is extended, but altogether it must not exceed one (1) year.”

Joint SH meeting:

- Quorum
- Votes based on the number of shareholders.

“Section 1240/2: The meeting for joint consideration of matters under Section 1240/1 shall be held at a locality where the principal business office of any amalgamating company is located or at a nearby province of the location of the principal business office of any amalgamating company, whereby:

(1) there must be shareholders holding shares altogether not less than one-half of the total number of shares of each amalgamating company to form the quorum;

(2) the shareholders attending the meeting shall elect one among them to chair the meeting;

(3) a decision of the meeting shall be by the majority of votes of the shareholders attending the meeting under (1), except where agreed among them otherwise.”

The voting method in item (2) is interesting in that the vote count will be equal amongst attending SHs even if they hold different numbers of shares.

Of course, SHs can agree to determine voting powers in accordance with the number of shares held by them, but there must be an agreement to such effect.

Amalgamation:

Requirement to register the amalgamation.

“Section 1241: The board of directors of the amalgamated company must apply for registration of amalgamation and, at the same time, submit the memorandum of association and the articles of association duly approved by the meeting under Section 1240/1 to the registrar within fourteen (14) days from the date of adjournment of the meeting under Section 1240/1.”

In addition to Section 1239 whereby each amalgamating company is required to register its resolution to amalgamate, the amalgamated company is required, under this Section 1241 to register the amalgamation within 14 days of resolving upon every resolution matter required under Section 1240/1. The resolutions may be passed part by part over multiple meeting dates.

Amalgamation:

Notes to be made in the company affidavit

“Section 1242: Upon the registrar having accepted the registration of amalgamation, they shall make notes of the following in the register:

- (1) In the case of amalgamation as a new company, it shall be noted that the old companies duly amalgamated shall lose their juristic person status.*
- 2) In the case of amalgamation, whereby a*

Now, it is possible to establish what happens to the non-surviving companies (i.e., $A + B \rightarrow C$).

company still retains its juristic person status, it shall be noted that the other remaining companies shall lose their juristic person status.”

Amalgamation:

Effects by
operation of law

“Section 1243: The amalgamated company shall be entitled to all property, liabilities, rights, duties, and responsibilities previously entitled by the old companies duly amalgamated.”

Note:

(1) Whereas in:

$A + B \rightarrow C$

There is no automatic transfer of licenses or permits to C

(2) Under the new option:

$A + B \rightarrow A$

A will keep its licenses and permits. B's licenses would not automatically transfer to A.

N.B.

- This table does not present all the changes to the CCC.
- The English translation is for convenience purposes only, and the Thai original wording is the only legally valid wording.

[\[1\]](#) The entire section means: CCC, Title 22, Chapter 4, Part IX, Sections 1238, 1239, 1240, 1241, 1242, and 1243.

Bangkok, December 2022

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