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Summary of Change in the Civil and Commercial Code No 23

On November 8, 2022, the Civil and Commercial Code (“CCC”) No 23 was published in the Government Gazette and will come into force after 90 days after the date publishing in the government gazette i.e., February 7, 2023. Below is the summary of change to the Civil and Commercial Code which made on the Company law: -

- Section 1016 add the registrar office in which the head office of the company is located for registration of change of the company. There is no impact to the current practice of registration of change of the company. However, it does not mention to the registration of change made on internet like what the change in the Revenue Code.
- Section 1017 on the requirement date of registration of change of the Company in case the matter of change arise outside Thailand and must be registered with the company registrar of publish within in the required period from the date the information reach the head office in stead of the location of registration or publish. Like the change in Section 1016, it does not impact the current practice, but it does not mention the publication of matter via internet or e-mail.
- Section 1020/1 allows the Minister to stipulate the fee by each transaction.
- Section 1097 reduce the number of the promoter from 3 persons to 2 persons. This is a material change of company law in term of the number of shareholders from 7 persons at the first time of the Civil and Commercial Code was first launched and reduce to 3 persons. It is interesting to pursue that the idea of 1 shareholder company will be adopted on not like other countries. However, some that lawyers still think that company must have at least 2 shareholders as the concept of partnership is the origin of company law.
- Section 1099 adds the limitation time of registration of memorandum of association (MoA) to be done within 3 years from the date of registration of the MoA, otherwise the MoA shall be terminated. Formerly the registered MoA is valid forever and it make the name of the company that has been reserved cannot be used. Some persons may make the reservation of name of company and register MoA only. As a result, it causes a loophole that allows some person trade the name of the company which is not a good governance. The change of the Section 1099 would unlock the name of company that has been reserved and get rid of the opportunity to trade the name of the company. The Section 19 of this CCC No 23 states that the MoA which has been registered before this Act come into force still valid for 180 days form the date this CCC No 23 come into force. However, the provision Section 19 does not clear that such MoA means the MoA that has been registered for 3 years or all MoA that have been registered before this CCC No 23 come into force. We are of opinion that it should means the MoA that has been registered more than 3 years before this CCC No 23 come into force, otherwise it would case



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unfavorable impact to MoA that have been registered not longer than 3 years and become weird impact.

- Section 1108 (1) change the wording of the agenda of statutory meeting of shareholder regarding the dispute settlement among the director and the shareholders from “may stipulate the dispute settlement...” to be should stipulate the dispute settlement...” The company registrar may deny the Article of Association that does not contain the clause of dispute settlement. Accordingly the process of incorporation of company may become more difficult and hard to incorporate.
- Section 1128 paragraph 1 require the company seal to be affixed in the share certificate provided that the company has registered company seal which was not required.
- Section 1158 change the provision as a result of new section (section 1162/1).
- Section 1162/1 allows the use of telecommunication technology for directors meeting e.g., virtual meeting, team meeting, line, etc. that the director need not present in person (physically) in the meeting. However, such meeting shall be held in accordance with the provisions of law on the meeting via electronic means.
- Section 1175 in effect cancel the requirement of publication of notice to the shareholders meeting in the newspaper. However, if the company has a share certificate issue to a bearer the requirement of publication of notice to the shareholders meeting in the newspaper does still require.
- Section 1178 clearly requires that the number of shareholders or proxy must be at least 2 persons. Formerly there was an issue that whether one representative holds more than proxy of more than one shareholders can make the meeting a quorum or not.
- Section 1201 paragraph 4 requires the payment of dividend must be made completely by 1 months from the date of general meeting of shareholder or the resolution of directors. The former provision dd require that the payment of dividend to be made but some company may just partial pay the dividend as the old provision did not require the dividend must be paid in full by one month of the date of general meeting of shareholder or the resolution of directors.
- Section 1237 (4) change the number of shareholder from 3 persons to 1 person to be in line with the change in the Section 1097 as discussed above.
- Section 1237 (5) change the wording of reason that court may instruct the company to be dissolve.
- The CCC no 23 has the new provision that replace the provision of amalgamation. Under the new provisions the amalgamation of company can be done by the amalgamated company will be disappear and new company will be formed, or one company will remained where other company will be disappeared. This can be understood as the combination where the two or more company combine together become a new company and the combined company become disappear (Combination) and the merger where one or more company transfer its business to a



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company and the transferor will be disappear (Merger). This new provision is almost similar to the provision of Revenue Code Section 74. For corporate income tax purposes, the loss carried forward of the companies involved in the amalgamation of company under CCC No 23 would not be allowed to be used after the amalgamations as it may be considered as amalgamation under Section 74(1)(b) of the Revenue Code. If it is the case the entire business under Section 74 (1)(c) would continue be opted for tax planning purpose. We need to wait for the revenue ruling on this issue. The new provision of CCC No 23 also stipulated process of amalgamation and also has a provision that the company must buy back the share form the shareholder(s) who object the amalgamation. The provision of CCC No 23 shall not apply to the amalgamation of company which is in process before the CCC No 23 come into force.

- Section 1246/1 on the conversion of registered partnership or limited partnership to be limited company has been updated on the number of partners of the registered partnership or limited partnership to be in line with the change of required shareholder as previously discussed.

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