

# **Newsletter No. 104 (EN)**

**Amendment to the  
Civil and Commercial Code regarding  
Limited Companies and Partnerships;  
Outlook on possible amendments to  
the Foreign Business Act**

January 2010

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## New Amendment of the Civil and Commercial Code

### **1. Planned amendment of the Civil and Commercial Code**

In July 2008 important changes were made to the Civil and Commercial Code regarding the regulations on “Partnerships and Limited Companies”. The number of shareholders at minimum required to form a limited company has been reduced from 7 to 3, the procedures and documentation required to validly hold a shareholder’s meeting have become more restrictive, however, the overall registration process has been reviewed to allow a quicker company set up.

**Beginning of 2009**, the Department of Business Development has proposed further amendments to the Civil and Commercial Code on the provisions related to Limited Companies and Partnerships. On 18 August 2009, the cabinet has approved the draft amendments. The draft law has been forwarded for review and approval, however, a final decision in the matter is still to be made.

The proposed amendment, should it be approved, would mean greater flexibility for Thailand’s business system:

#### **1. Registration of corporate changes after incorporation**

**Current Situation:** Currently, applications must be filed at the Registration Office where the principal business of the company is situated.

**Proposed Amendment:** The registration of corporate changes after incorporation can be filed to the registrar at any Companies and Partnerships Registration Office as prescribed by the Minister of Commerce of Thailand (Section 1016)

**Your Advantage:** The amendment will allow the company’s promoters to register amendments at any of the Companies and Partnerships Registration Offices

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as prescribed by the Minister of Commerce. Should your business be located in a more remote area while your major business activities take place in Bangkok this amendment would mean an advantage. Law firms or operating offices will be able to register any corporate changes at the nearest Registration Office, what will save cost and time.

### 2. Expiration of the Memorandum of Association

**Current Situation:** Currently, a company shall be incorporated within three months from the statutory meeting. However, should the company not be formed, the Memorandum of Association would still be valid.

**Proposed Amendment:** Should the incorporation of the company not be registered within 10 years from the date of which the memorandum of association has been registered, the memorandum of association will render invalid and the promoters of the company shall be jointly and unlimitedly liable for any obligations and disbursements (Section 1099).

**Your Advantage:** The proposed amendment will solve the problem that currently exists for those who wish to form a company under the same name as a company, who already registered its Memorandum of Association. Once the amendment is in effect, there will be a clear regulation that such name will be available after a period of 10 years only.

### 3. Board of Directors' meetings

**Current Situation:** Currently, Board of Directors meetings are only valid when the directors are physically present at the meeting.

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**Proposed Amendment:** The company's directors shall attend Board Meetings in person at the place specified in the invitation. If the Articles of Association, however, allow to hold Board Meetings by using communicating technologies, such as video conference, the directors do not have to attend the meeting in person. Resolutions passed in such meeting would become valid upon the written confirmation signed by all directors regarding their attendance has been received (Section 1162/1).

**Your Advantage:** The proposed amendment would allow company's directors to attend meetings by telephone-conference or video conference. This will contribute to an easier management of Thai companies in particular for foreign investors.

#### 4. Invitation to Shareholder's meetings

**Current Situation:** Currently, invitations to shareholders' meetings need to be sent by registered mail to every shareholders of the company and in addition thereto a notice of the summoning of the meeting must be published at least in one local newspaper.

**Proposed Amendment:** The publishing of invitations in local newspapers shall only be required in case a company has issued bearer shares (Section 1175)

**Your Advantage:** The proposed amendment would help to decrease formalism and also help to reduce cost.

Overall, the proposed amendments to the Civil and Commercial Code shall help to increase the flexibility and efficiency of company establishment and incorporation by reducing unnecessary cost and proceedings.

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### 5. Summary

The proposed changes are clearly favourable for foreign investors. In particular the possibility to hold Board of Director's meetings without the necessity to be physically present in Thailand will lead to much greater flexibility and greater control over the company.

Should you currently not have appointed foreign directors or use nominee directors who do not have other functions than voting in accordance with what the "real director" abroad advised, you might consider restructuring once the proposed amendment became a law.

This might help saving operating expenses for your company.

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### **2. Outlook on possible amendments to the Foreign Business Act**

A less positive signal is surely set with reviving the discussions, which many thought would have come to an end with the new government, to amend the definition of the term “foreigner” in the Foreign Business Act and to delete certain exemptions from the general requirement to apply for a Foreign Business License when doing business in Thailand as a foreigner.

The Ministry of Commerce has recently suggested the following methods to the Board of Economic Ministers to enforce the law on foreign business in Thailand:

#### **1. Moderate Method:**

- Removal of certain businesses from List 3, which are already subject to specific laws and governed by other organizations, e.g. travel agencies, forward trading, securities business, derivatives business, commercial banking, credit business, insurance business, pawn shops, schools and credit financing.
  
- Abolishment of the exception contained in the Foreign Business Act allowing wholesale / retail businesses with a minimum capital of THB 100,000,000 (THB One Hundred Million) to conduct business in Thailand without being required to apply for a Foreign Business License. This change of the law would mean that every business operator needs to apply for a Foreign Business License.

#### **2. Strict Method**

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- Removal of certain businesses from List 3 and establishment of a new organization, which shall have control over every organization dealing with foreign business. Requirement for every foreign business to inform about the details of its business.
- Amendment of the definition of the term “foreigner” to include scenarios where foreigners have more than 50% of the voting rights to control or manage the company or to control the appointment of executives or directors, and receive benefit.. A grandfather rule would excluding those businesses, which already operated prior to the new legislation.

We will monitor the future developments closely and keep you informed on further developments.

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