

# Summary of Changes to Company Registration laws.

## Changes made to 3 issues of Laws as follows:

1. Act on Additional Amendment to the Civil and Commercial Code (Issue No.....) B.E.2551 (Law on partnerships and companies)
2. Act Prescribing Offense Pertaining to Registered Partnership, Limited Partnership, Limited Companies, Associations, and Foundations (Issue No.....) B.E. 2551 (Criminal offense on partnerships and companies)
3. Public Company Act (Issue No.3) B.E. 2551 (Law on public company)

**\*\*\*\* Presently, these laws have not been issued in the Government Gazette yet (latest data on February 18, 2008). Once the laws have been issued in the Government Gazette, the laws will be effective after 120 days from the date of issuance in the Government Gazette\*\*\*\***

## Reasons to amend the Civil and Commercial Code are as follows:

1. For the convenience in carrying out the registration (reduce the number of promoter, reduce the time for registration, reduce time for advertising in newspaper in case of increasing capital, decreasing capital, amalgamation of limited company and etc., reduce time for the creditor to make an objection) and to transform SME to larger enterprise.
2. To amend the unnecessary and complicated provisions such as amend the referral of contracts and other evidences against third person, to cancel the submission of the Memorandum of Association to the Registrar.
3. To provide protection to the shareholder such as the notification of dividend disbursement to shareholders, to amend the fixed time for sending the notice of summoning of meeting.
4. To reduce the processes of removal the defunct company from the register and to fix the period of time that the company will be restored to the register for longer period, and to make clear that when the removal of defunct company from the register has been done, such company's juristic person status shall be deemed immediately terminated.

## There are 13 matters have been changed as follows:

1. Certificate of registration of partnership or company (Amend the Civil and Commercial Code, Section 1020 Second Clause)

**Old** Every person, who has paid the fee according to the ministerial regulation, is entitle to require a certificate of registration of any partnership or company or other document to be issued to him by the Registrar.

**New** The Registrar will issue or deliver a certificate of registration of any partnership or company or other document to the person who has the interest in any specific partnership or company only (in this case the person who has the interest in the businesses or investment of the partnership or company shall be the partnership or company, shareholder, director, and creditor).

2. Referral to the existence of any agreements or documents or particulars required by Law to be registered against third persons to claim for any advantages (Amend the Civil and Commercial Code, Section 1023 and add Section 1023/1).

**Old**

- The partners, partnership or company is entitled to make the referral when the registration and publication in the Government Gazette has been done.
- However, the partner or shareholder who, and the partnership or company which, before such publication, has received the performance of an obligation is not bound to make restitution.
- But, third persons may take advantage of such existence although such registration or publication in the government gazette has not been made.
- On such publication being made in the government gazette, the registered documents or matters shall be deemed to be known to all persons whether connected the partnership or company or not (Section 1022).

**New**

- **The partners, partnership or company is entitled to take advantage of such existence when the registration has been done.**
- **But, third persons may take advantage of such existence although such registration has not been made.**
- **The partner or shareholder who, and the partnership or company which, before such publication, has received the performance of an obligation is not bound to make restitution.**
- **On such publication being made in the government gazette, the registered documents or matters shall be deemed to be known to all persons whether connected the partnership or company or not.**

**\*\*Defending with other person about the authorized power\*\***

**Old** Will be used for defending with third persons only if when registration and publication has been made in the government gazette.

**New** **The principle is still the same, but it has been stipulated to be clearer that the existence of agreements, documents or particulars will only be used against third persons when it has been registered. However, until the publication will be made in the government gazette, such registered agreements, documents or particulars shall not be used as evidence to defend with third persons that the partner, partnership, company or director has no authorized power in order to avoid from taking responsibility.**

3. Number of the promoter and shareholder of a limited company (Section 1012, 1097, 1100, 1237)

**Old** Number of promoters and shareholders shall be 7 persons at least. If the number of shareholders reduced to less than 7 persons, the limited company may be dissolved by the Court.

**New** **Principle is still the same, but the numbers of promoters or shareholders are reduced to be at least 3 persons. Therefore, when this new Law is effective, the limited companies which have previously been registered will be able to reduce the number of its shareholders to 3 persons.**

4. Procedures and required time for company registration (Section 1097-1111 and Section 1111/1)

**Old** Registration of company consists of 10 phases and will take at least 9 days as follows:-

- (1) The promoters agree to operate a business together.
- (2) Check the name.
- (3) Promoters cooperate in preparing the memorandum of association.
  - Name of the proposed company.
  - Province where the registered head office of the company will be situated.
  - Objectives of the company (scope of businesses to be operated by the company)
  - A declaration that the liability of shareholders shall be limited (if the director's liability will be unlimited, the liability must be clearly specified as unlimited. In case unlimited liability is specified, the unlimited responsibility of such director will be ended after 2 years from the expiration of his period of office).
  - Amount of capital, number of shares and value per share which the company proposes to be registered.
  - Names, addresses, occupations and signatures of the promoters, and number of shares being subscribed by each of them.
- (4) Carry out the registration of the memorandum of association
- (5) Share Subscription Form
- (6) When all shares of company have been subscribed, the promoters must send a notice to summon the general meeting of subscribers which shall be called the statutory meeting. The notice summoning the meeting must contain all particulars of the businesses to be transacted at the statutory meeting and such notice must be delivered to every subscriber at least 7 days before the day on which the meeting is to be held and also be sent to the Registrar.
- (7) Hold the statutory meeting.
- (8) The promoters assign all businesses of the company to the directors.
- (9) Director shall cause the promoters and subscribers to pay each share value.
- (10) Carry out the registration of the company.

**New** If carry out according to phrase 1-9 within the same day, the registration of the memorandum of association and the setting up of the company will be able to be made within the same day. However, it's conditioned that *all of subscribers and promoters must participate in the statutory meeting and give the consent for the businesses being transacted in the statutory meeting* (formerly, resolution must consist ½ of all subscribers + ½ of all shares).

5. The printed copy of the memorandum of association and articles of association of the company ( Cancel the Section 1111 Fifth Clause, Section 1147)

**Old** For the registration of the company, registration of change of the memorandum of association and articles of association, the director must submit to the Registration Office ten printed copies of the memorandum of association and of the articles of association (if any) of the company.

**New** Cancel the submission of the printed copies aforementioned.

6. Notice of summoning of the meeting of shareholders (Section 1175).

**Old** Notice must be published at least twice in a local newspaper, not later than 7 days before the date fixed for the meeting, or shall be sent by post not later than 7 days before the date fixed for the meeting to every shareholder.

**New** Notice must be published at least one time in a local newspaper, not later than 7 days before the date fixed for the meeting, or shall be sent by post not later than 7 days before the date fixed for the meeting to every shareholder. In case of the special resolution, the notice must be published sent by post not later than 14 days before the date fixed for the meeting to every shareholder (and must also be published not later than 14 days before the date fixed for the meeting), and must specify particulars which will be proposed for considering making the vote.

(Remark: **Problem:** If delivery was really made via a (Advice of Delivery) registered mail, but there was no any notice in such delivered envelope. **Solution:** When the advice of delivery has been sent to the recipient, the recipient should go to the police station to request the officer to record in the police's dairy report while the recipient is opening such mail in the presence of the police who will act as the witness in confirming the existence of the notice whether such notice exists / not exists in the envelope. But, in case of such notice is sent personally *by mean of hand-to-hand* and the recipient has signed his/her name confirming of receiving such notice, the legal action shall be not required).

7. A way to pass a special resolution (Section 1194).

**Old** - Special resolution must call for two successive general meetings of shareholders and vote.

- The first general meeting, resolution must be passed by the majority of not less than three-fourths of the votes.

- The subsequence general meeting has been summoned and has been held not less than 14 days and not more than 6 weeks after the former meeting.

- The full text of the resolution passed in the first meeting has been included in the notice summoning the second meeting/ the resolution passed in the former meeting has been confirmed in the subsequent meeting by a majority of not less than two-thirds of the votes.

**New** Special resolution will be passed by a general meeting of shareholders and has been passed by a majority of not less than three-fourths of all votes of the shareholders who present in the meeting and has the right to vote.

8. Declaration of dividend disbursement (Section 1204).

**Old** Notice of any dividend that may have been declared shall be either published twice at least in a local newspaper or sent a letter to every shareholder.

**New** Notice of any dividend shall be made in letter and sent to every shareholder and if there is any share issued to any shareholder, such issuance of share shall be published at least once in local newspaper.

9. Reduction of Capital and Amalgamation of Limited Company (Section 1226 and Section 1240).

**Old** Reduction of capital

- The proposed reduction must be published in local newspaper at least 7 times.
- The proposed reduction notice must be sent to all creditors, requiring the creditors to present, within three months from the date of such notice, any objection they may have on such reduction.

- New** - **The proposed reduction must be published in local newspaper at least 1 time.**
- **The proposed reduction notice must be sent to all creditors, requiring the creditors to present, within 30 days from the date of such notice, any objection they may have on such reduction.**

**Old** Amalgamation of Limited Company

- The proposed reduction must be published in local newspaper at least 7 times.
- The proposed reduction notice must be sent to all creditors, requiring the creditors to present, within Six months from the date of such notice, any objection they may have on such reduction.

- New** - **The proposed reduction must be published in local newspaper at least 1 time.**
- **The proposed reduction notice must be sent to all creditors, requiring the creditors to present, within 60 days from the date of such notice, any objection they may have on such reduction.**

10. Transforming Partnership into Limited Company (Adding the 12<sup>th</sup> part in Chapter 4 Section 1246/1 – 1246/7).

**Old** In order to transform a registered partnership/limited partnership into a limited company, the registration of dissolution of such registered partnership/limited partnership must be made before applying for the registration of a new limited company.

**New** It has been stipulated that any registered partnership/limited partnership which have the number of partners from 3 persons and more and all partners have given their consent, such partnership shall be entitled to be transformed into a limited company complying with the procedures listed as follows:

- (1) All partners must agree to transform the partnership into a limited company.
- (2) File a written consent of transforming the partnership to the Registrar within 14 days form the date of such consent.
- (3) Publish in local newspaper once at least and submit a notice to all creditors to present their objection within 30 days from the date of notice (in case of the notice has not been published or sent to all creditors, such partnership shall be subject to penalty not over 20,000 Baht).
- (4) If there is any objection presented by any creditor, transformation of such partnership shall not be made until the debts or obligations have been performed or warranted (The penalty for an offence under this clause shall be subject to penalty not over 20,000 Baht).
- (5) Meeting of all partners shall be held to consider giving the consent on the matters as follows:
  - (5.1) To prepare the memorandum of association
  - (5.2) To fix the amount of capital, number of shares and value per each share, and to fix the amount of shares to be given to each partner.

- (5.3) To fix the share value which has been paid on each share that must be not less than 25% of value of share.
- (5.4) To fix the amount and the status of ordinary shares or the preference shares to be issued and allotted to the shareholders by the company.
- (5.5) To consider the election of directors and fix the power of directors.
- (5.6) To consider the election of the Auditor.
- (6) The managing partner shall hand over the businesses of the partnership to its board within 14 days from the date that the meeting has been held. (The managing partner who offends this provision shall be subject to penalty not exceeding 50,000 Baht).
- (7) The Board shall be liable to notify each partner to pay at least 25% of full value of each share within 30 days from the date of notice.
- (8) The Board shall apply for the registration of such transformation within 14 days from the date that the payment on each share has been done (Offense shall be subject to penalty not exceeding 20,000 Baht).

11. Result of the transformation.

- (1) The former registered partnership/ limited partnership will be dissolved.
- (2) The newly set up company will be transferred all assets, debts, rights and obligations of such dissolved partnership.
- (3) Debts of the partnership which have been occurred before the transformation shall be firstly performed in accordance with the command of the creditors. If the company can not repay such debts, the creditors may apply for payment to the partners of such partnership according to the range of liability on the mentioned debts that such partner retains during the existence of the partnership.

12. Reduce Processes for Registration of dissolution of Partnerships/ Limited Companies. (Amended the Section 1253).

**Old** Publishing in a local newspaper at least 2 times.

**New** Publishing in a local newspaper reduced to be 1 time.

13. Removal of defunct company from register (Cancelled the 11<sup>th</sup> Part of Section 1246 of Chapter 4 and added in Chapter 6 Section 1273/1-1273/4).

**Old** (1) Removal can be applied to the limited companies only.

(2) The procedures are listed as follows:

- Letter enquiring whether the company is carrying on business will be sent to the limited company 2 times.
- First time, the company will have one month to answer the registrar's enquiry.
- Second time, after 1 month and within 14 days.
- After 1 month, the registrar will publish in a local newspaper and send a notice that at the expiration of 3 months from the date of that notice, the name of the company will be struck off from the register and the company will be dissolved.
- Publish the notice of striking off company's name in the Government Gazette.
- Removal of the defunct company from the register will take 6-7 months.
- Letter of enquiry of Registrar shall be sent by post.
- The removal consists of 2 types as follows:

- While the company has not been dissolved (being existed but is not carrying on business or on operation) and;
  - When the company is being wound up (the Registrar has reasonable to believe either no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months after notice by the registrar demanding the returns has been sent by post to the company).
- Result of removal the name of company from the Register shall causes the company to be dissolved when the notice has been published in the Government Gazette.
  - Liabilities of the directors, managing officers, shareholders shall be enforced as if the company has not been dissolved.
  - The company, shareholders, or creditors may file the application to the Court requiring the name of company to be restored to the Register and thereupon the company shall be deemed as if its name had not been struck off without a limit of period of time.

**New**

- **Removal can be applied to both partnerships and limited companies.**
- **Letter enquiring whether the company/partnership is carrying on the business or on operation or not shall be reduced to 1 times only. Such letter shall be sent by the registered mail and the juristic person must provide the answer to the Registrar within 30 days from the date receiving such letter. After such fixed period expired, the notice stating that after 90 days period expired the company will be struck off the register (This will take 4-5 months).**
- **In case of the name of the company will be struck off the register during the process of liquidation, it shall have no period of time fixed for the liquidator to submit the report of the liquidation and shall have no registration of the completion of the liquidation. Provided that the letter shall be sent by registered mail to notify the company/partnership to elect the liquidator or to submit the report, or to carry out the registration of the completion of the liquidation within 180 days. If the business fails to carry on such actions, the registrar shall publish in a local newspaper and sent a letter notifying the business that its name will be struck off the register when the 90 days period is expired.**
- **After 10 years from the date that the company is struck off the register by the Registrar, the business shall be not entitled to file any application to the Court requiring the name of company to be restored to the Register.**
- **Striking the name of company off the register shall have no need to be published in the Government Gazette.**
- **Partnerships and companies shall be immediately dissolved when its name have been struck off the register, which is different from the old provision that the partnerships/companies will be dissolved only when it has already registered the dissolution.**
- **Act Prescribing Offense Pertaining to Registered Partnership, Limited Partnership, Limited Companies, Associations, and Foundations, Section 38/1 which has stipulated the criminal offense for person who uses the name of any**

**partnership/company that has been struck off the register shall be subject to the penalty not exceeding 50,000 Baht and shall be additionally fined at the rate not exceeding 1,000 Baht until such person will stop its usage.**

