

Draft Act amending the Civil and Commercial Code (Partnerships and Companies)

In response to numerous complaints received from private companies and partnerships, the Ministry of Commerce proposed that certain provisions of the Civil and Commercial Code be amended. The Cabinet resolved on 18 August 2009 to accept the amendments and forwarded the Draft Act to the Office of the Council of State for review before it is sent to the House of Representatives for final approval.

Set forth below are some of the changes that will be enacted if the Draft becomes law.

Proposed Amendments	Rationale
<p>Section 1016 shall be repealed and replaced by:</p> <p>“Section 1016 Registrations of partnership or company establishment, subsequent alterations to the registration records and any other matters that are registrable pursuant to Title 22: Partnerships and Companies shall be registered with the Registrar at the Partnerships and Companies Registration Office as prescribed and announced by the Minister.”</p>	<p>To promote convenience and facilitate registration, companies and partnerships may register at any Partnerships and Companies Registration Office capable of handling the registration.</p>
<p>Section 1017 shall be repealed and replaced by:</p> <p>“Section 1017 If the facts to be registered or published occur in a foreign country, the period for registration or publication thereof shall commence when the notice thereof arrives at the head office of the registered partnership or company.”</p>	<p>This is in line with the amended Section 1016 of the Civil and Commercial Code and is aimed at reducing difficulties faced directors.</p>
<p>The following shall be added as Section 1020/1 of the Civil and Commercial Code:</p> <p>“The Minister shall also be empowered to exempt fees when issuing a Ministerial Regulation to prescribe the fees under Section 1018 and Section 1020.”</p>	<p>To ensure flexibility and efficiency, the Minister will have the power to exempt fees for registration, examination of documents, and issuance of certificates and copies of documents of a partnership or company.</p>

<p>Section 1099 shall be repealed and replaced by:</p> <p>“Section 1099 The Memorandum of Association shall be made in at least two original copies and signed by all promoters. The signatures of those promoters shall be verified by two witnesses. One copy of the Memorandum of Association shall be used for registration.</p> <p>In the event that a limited company is not established within ten years of the registration date of the Memorandum of Association, such Memorandum of Association shall become void and Section 1113 shall apply <i>mutatis mutandis</i>.”</p>	<p>At present, a registered Memorandum of Association is valid for an unlimited term. This forever bars the company name from being used by others, even if the company is never actually registered.</p> <p>Under the Draft, a registered Memorandum of Association will become void if the limited company is not incorporated within the period specified therein. This will give other persons the opportunity to operate a business under the name specified in the Memorandum.</p>
<p>The following shall be added as Section 1162/1 of the Civil and Commercial Code:</p> <p>“Directors must attend meetings of directors at the venue specified in the meeting notice.</p> <p>However, in the event that the company is permitted by the Articles of Association to hold a meeting of the Board of Directors with the use of any communication technology and directors are not obliged to appear at the meeting venue specified in the meeting notice, the company may hold such meeting, provided such meeting shall be deemed valid when all directors send their written confirmation of attendance and resolutions to the company.”</p>	<p>In addition to the chosen venue, the limited company may convene the meeting of the Board of Directors with the use of any form of communication technology.</p> <p>This will be more convenient for directors who are not resident in Thailand or who are overseas at the time of the meeting. As Board meetings will be easier to convene and attend, management will in turn run more smoothly.</p>
<p>Paragraph one Section 1175 shall be repealed and replaced by the following:</p> <p>“A notice for a general meeting shall be sent by registered reply post to all shareholders whose names appear in the Shareholder Register not less than seven days prior to the meeting date. In addition, if the company has offers bearer shares, the notice shall be published in a local newspaper at least once not less than seven days prior to the meeting date. If, however, the notice calls for passing a special resolution, it shall be sent by registered reply post and published in a local newspaper not less than 14 days prior to the meeting date.”</p>	<p>To cut unnecessary costs, meeting notices will only need to be sent by registered reply post to shareholders. Notices will not need to be published in a newspaper unless the company issues share certificates to shareholders. This practice will be the same as when notifying the payment of dividends under Section 1204.</p>