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Amendment to the Civil and Commercial Code with an aim to introduce a new form of merger and changes in the structure of a private limited company

On November 8, 2022, the Act Amending the Civil and Commercial Code (“CCC”) (No. 23) B.E. 2565 (2022) (the “**Amendment Act**”) was published in the Royal Gazette and will enter into force 90 days from the day after the publication date, i.e., on February 7, 2023.

Key amendments introduced by the Act

Shareholding Structure

Prior to the Amendment, the minimum number of promoters required to form a company is three individuals. This has been changed to just two individuals.

CCC	Amendment Act
<ul style="list-style-type: none"> The minimum number of promoters is three If the number of shareholders is reduced to two, the court may order the company to be dissolved or the company may file for dissolution. The quorum requirement for the shareholders' meeting is at least one-fourth of the company's capital The DBD allows the shareholders to agree on the Memorandum of Association remaining in force for 10 years from the date of registration of the MOA; if the shareholders do not express an agreement on this, the general rule is that the MOA will remain in force perpetually The share certificate shall present a director's signature The notice of convening the shareholders' meeting shall be delivered to all shareholders via registered mail and made public in a local newspaper. 	<ul style="list-style-type: none"> The minimum number of promoters is two If the number of shareholders is reduced to one, the court may order the company to be dissolved or the company may file for dissolution The quorum requirement for the shareholders' meeting is the presence of at least two shareholders (or their proxies) representing at least one-fourth of the company's capital If the company is not registered within 3 years from the date on which the Registrar registered the Memorandum of Association, the latter shall no longer be valid The share certificate shall bear at least a director's signature and stamped the company's seal (if any) The notice of convening the shareholders' meeting shall be delivered to all shareholders via registered mail* at least 7 days prior to the meeting, and only in

*By implication of Section 1244 of CCC, delivery of the notice to a shareholder in person is deemed to have been duly served.

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case the company has issued share certificates to bearers, it shall be made public in the local newspaper at least once or posted in the electronic media in accordance with the procedure prescribed in the Ministerial Regulation no less than 7 days before the meeting. A notice convening a general meeting where a special resolution is required to be obtained shall be made in the stated manner at least 14 days in advance of the meeting.

Consolidation of private limited companies

The CCC before the Amendment recognizes only the concept of "amalgamation" in which two or more companies can amalgamate into one new legal entity. The Amendment introduces the merger in which one company merges with another company without forming a new legal entity.

CCC	Amendment Act
<ul style="list-style-type: none"> • Amalgamation is the only type of business consolidation: two or more companies consolidating cease to exist and form a new entity • There is no protective measure for a shareholder objecting to the business consolidation • Creditors can object to the business consolidation within 60 days from the notification date • A Joint Shareholders' Meeting is not provided by the Code • There are no provisions regarding the handover of the business 	<ul style="list-style-type: none"> • Business consolidation can happen in two ways: Amalgamation; Merger, with one of the companies surviving and the other consolidating companies being dissolved • The company must arrange for the shareholders who participated in the general meeting where the special resolution was passed, and who objected to the consolidation resolution, to sell their shares at an agreed price, or at a price determined by an appraiser. Such shareholders will become shareholders of the merged or new entity if they do not accept the offer to buy their shares within 14 days of receipt of the offer to purchase. • Creditors can object to the business consolidation within 1 month from the notification date • Within 6 months of the last company's shareholders' meeting resolving to consolidate, a Joint Shareholders' Meeting shall be convened to consider a prescribed agenda*. The 6-month deadline can be extended by the resolution of the Joint Shareholders' Meeting, but for no more than 1 year. • The business handover shall occur within 7 days from the last Joint Shareholders' Meeting.



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******The regulation specifies the agenda items that must be considered at the Joint Shareholders' Meeting. To mention some, the name of the Company resulting from the consolidation, the objectives, the appointment of directors, and the appointment of an auditor. In addition, the Joint Shareholders' Meeting shall be held in proximity to the headquarter of one of the consolidating companies. A quorum to be met is provided, namely, a minimum of half of each company's total shares must be represented. A Chairperson of the meeting shall be elected by the attending shareholders. Unless otherwise agreed, resolutions shall be resolved by the majority votes of the attending shareholders.

Transitional provisions

The Amendment Act also provides a set of transitional provisions to address the transition period and allows limited companies to adapt. In particular, Section 19 of the Amendment Act provides that in the event that an MOA is already registered prior to the date the Amendment Act becomes effective (i.e., February 7, 2023, the "effective date") but the company has not yet been registered, the company shall be registered within 180 days from the effective date of the Act. However, as we already mentioned in the first table above, in case the MOA has not yet been registered prior to the effective date of the Act, the company shall be registered within 3 years from the MOA registration to avoid the latter being invalid.

Moreover, any business consolidation approved by a shareholders' meeting prior to the effective date of the Amendment Act can be carried out according to the current version of the CCC.

What ILCT Ltd. can do for you

ILCT Ltd. can support companies in evaluating and carrying out the procedures for a business consolidation, either in the form of Amalgamation or Merger.

The firm has extensive experience in mergers, takeovers, and acquisitions of both private and public-listed companies. Our services include performing due diligence investigations, handling tender offers, tax planning and handling other formalities with the Securities Exchange Commission and the Securities Exchange of Thailand (in the case of public-listed companies), as well as preparing the necessary documentation to effect the change in ownership and the taking of necessary corporate actions, etc.

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