



Legal Alert | Corporate M&A

Cabinet's Resolutions on the Draft Ministerial Regulations following the Civil and Commercial Code Amendment No. 23 B.E. 2565 (2022)

After the fundamental changes to the Civil and Commercial Code of Thailand (the "CCC") under the Civil and Commercial Code Amendment No. 23 B.E. 2565 (2022) (the "Amendment"), which becomes effective on February 7, 2023, in order to modernize corporate formalities for the private limited companies in Thailand, the Cabinet recently approved two drafted ministerial regulations to provide clarity and further elaborate on the Amendment. The Cabinet's resolutions on February 6, 2024 regarding these matters are as follows:

- 1.1. Draft Ministerial Regulation re: Notice to the General Meeting of Shareholders Advertisement in Electronic Media for Limited Companies that has issued Bearer Share Certificates (the "Ministerial Regulation re: Notice Advertisement for Bearer Share Certificates"); and
- 1.2. Draft Ministerial Regulation re: Appointment of a Valuer in the event that Shareholders object to an Amalgamation/Merger and the Share Purchase Price cannot be Agreed On (the "Ministerial Regulation re: Valuer Appointment").

We summarize the key provisions of these draft ministerial regulations for your information:

1.1. Ministerial Regulation re: Notice Advertisement for Bearer Share Certificates

Despite the majority of companies typically having named shareholders recorded in their shareholder register and issued named share certificate, and almost none having bearer share certificates issued to unnamed shareholders, it is worth noting that the Cabinet has recently approved the draft Ministerial Regulation, with respect to the bearer share certificates specifically.

To recap on the Amendment, according to Section 1175 of the CCC, the publication of a notice to the general meeting of shareholders (the

March 2024

Get in touch

Chai Lertvittayachaikul
Partner
chai.l@kap.co.th

Thanyaluck Thongrompo
Partner
thanyaluck.t@kap.co.th

Kamonrat Kongtheing
Associate
kamonrat.k@kap.co.th

Suphatcha Sirilapanan
Associate
suphatcha.s@kap.co.th



Kudun and Partners

34/3 Vivre Langsuan, 4th,
5th, and 6th Floor, Soi
Langsuan, Lumpini,
Pathumwan, Bangkok 10330,
Thailand
contact@kap.co.th

“Notice”) in the local newspaper is no longer required for the named shareholders. Instead, the delivery of registered mail to such shareholders will suffice, unless the company’s articles of association provide otherwise. In contrast, in case of the bearer shareholders, the company is still obligated to publish such Notice in the local newspaper at least once or in electronic media in accordance with the ministerial regulation.

In light of this, to provide alternatives for the company having the bearer shareholders, the Cabinet approved the draft Ministerial Regulation re: Notice Advertisement for Bearer Share Certificates to set out the criteria, procedures, and conditions for advertisement on such Notice in the electronic media. The key requirements are highlighted as follows:

1. Companies that have issued bearer share certificates to their bearer shareholders may advertise the Notice in electronic media instead of publishing the Notice in the local newspaper.
2. The advertisement shall be advertised on a website generally accessible and the ownership over such website must be verifiable, taking into consideration the accessibility, convenience, and non-discriminatory manner of such website, or advertised on websites specified by the Director-General of the Department of Business Development.
3. The advertised information or document must specify the place, date, time, and agenda of the meeting. In the case of a Notice to pass a special resolution, the matter proposed must also be specified.
4. The advertised information or document must be advertised from the date of advertisement in electronic media until the date of the general meeting of shareholders.

1.2. Ministerial Regulation re: Appraisal Appointment

Following the Amendment, according to Section 1238 of the CCC, private limited companies now have 2 merger options upon a special resolution. The first option is an amalgamation, whereby companies are consolidated to form a new company and the amalgamating companies are dissolved (the “**Amalgamation**”). The second option is a merger whereby companies are merged and only one merging company remains (the “**Merger**”).

To minimize the conflict between shareholders having different opinions on the Amalgamation/Merger of a company and the share purchase price, and to protect the interests of the minority shareholders, the Amendment introduces Section 1239/1 to tackle this issue. This section stipulates that in the event that a company has passed a special resolution approving an amalgamation/merger with minority shareholders objecting to such Amalgamation/Merger (the “**Dissenting Shareholders**”), the company

About Us

Corporate and M&A Practice Group

Kudun and Partners is at the forefront of this growth in Thai and regional activity. Our team of widely recognized lawyers has worked on many of the region’s largest deals, as well as providing crucial corporate advisory services. We distinguish ourselves by our responsive, client-focused approach and commercial acumen and are committed to developing a deep understanding of our client’s goals and objectives.

must arrange for a share purchaser to purchase the shares of the Dissenting Shareholders at an agreed price. However, if the share purchase price cannot be agreed on at this stage, the share purchase price, as determined by an appointed valuer (the “**Valuer**”), shall be used. In the event that the Dissenting Shareholders do not sell their shares within fourteen days from the date of receiving the share purchase offer, the company may proceed with the amalgamation/merger and the Dissenting Shareholders shall be considered shareholders of the amalgamating/merging company.

The Amendment does not specify the criteria, procedures, and conditions of the appointment of the Valuer. Therefore, the Cabinet approved the draft Ministerial Regulation re: Valuer Appointment to fulfil this requirement. The key highlight of the Ministerial Regulation re: Valuer Appointment are summarized as follows:

1. Definitions

“**Dissenting Shareholder**” means a shareholder who has attended a general meeting of shareholders concerning a special resolution to approve the amalgamation/merger and has voted against the amalgamation/merger.

“**Valuer**” means a person who evaluates and determines the purchase price of the shares of the Dissenting Shareholders.

“**Share Purchaser**” means a person arranged by the company to purchase the shares of the Dissenting Shareholders in the event that the company passes a special resolution approving the amalgamation/merger of a company.

2. Requirements

2.1. The company shall appoint an independent Valuer to evaluate and determine the purchase price of the shares held by the Dissenting Shareholders in the case where the Dissenting Shareholders cannot agree on the share purchase price.

2.2. The Valuer must be one of the following:

- (1) A certified public accountant according to the law on professions;
- (2) An arbitrator registered with the Office of the Court of Justice in the field of property valuation;
- (3) A court expert in assessing the value of property registered with the Office of the Courts of Justice;

- (4) A property valuation company or main valuer approved by the Office of the Securities and Exchange Commission;
- (5) A financial advisor or operational supervisor approved by the Securities and Exchange Commission; or
- (6) A qualified valuer registered with the Thai Valuers Association. and the Valuers Association of Thailand.

Kindly note that the approval of these Ministerial Regulations is anticipated to bring clarity and convenience to business entities. We will keep you posted on any further updates or amendments to the Ministerial Regulations and let you know when they are published in the Royal Gazette and become effective. Please stay tuned!

For more information, please get in touch with [our corporate and M&A practice](#), or alternatively, please contact the author at chai.l@kap.co.th and thanyaluck.t@kap.co.th or visit www.kap.co.th.

All information, content, and materials contained in or referred to in this article do not, and are not intended to constitute, legal advice and are purely provided for general informational purposes only. For more information, please contact the authors.