

## Amendment to the Public Company Act

8 November 2017

### Background

The National Council for Peace and Order (the "NCPO") has considered the lack of clarity on conditions, procedures and time limitations related to the laws governing business operations, as these are critical issues for investors when considering doing business in Thailand. Thus, the NCPO decided it was imperative to amend related laws in order to provide better understanding of, and increase the ease of doing business in Thailand. Therefore, the NCPO issued Order No. 21/2560 on 4 April 2017, which was published in the Government Gazette and came into effect on the same day, to amend significant laws governing business operations in order to improve and facilitate doing business in Thailand. Section 100 of the Public Company Act B.E. 2535 (1992) was among the amended laws.

### The Amendment

**Section 100:** Under the previous Public Company Act, Section 100 only stipulated a condition affecting shareholders when requesting the board of directors ("BOD") to call for an extraordinary meeting of shareholders ("EGM"). This section did not include an option covering the case where the BOD did not take action. The amended Act now also includes two new elements: 1) the procedure to be undertaken upon the request from shareholders to the BOD and, 2) the addition of supplementary clauses allowing shareholders to proceed to the EGM without relying on the BOD.

Firstly, the qualification for shareholders to subscribe their names to a notice requesting the BOD to convene an EGM has been modified. The new law only requires shareholders, holding shares of not less than 10% of the total number of shares sold, to proceed with such action. Upon receiving such a request, the BOD must arrange for the meeting within 45 days. The previous provision, required either, (a) shareholders holding shares of not less than 1/5 of the total number of shares sold (i.e. 20% of the total number of shares sold), or (b) a total of not less than 25 shareholders, holding shares of not less than 1/10 of the total shares sold, (i.e. 10% of the total number of shares sold), to subscribe their names to a notice. The previous provision further required that the BOD would convene the meeting within 1 month.

Secondly, the new law now entitles shareholders to hold the meeting, in the case where the BOD fails to proceed when the period of 45-day has elapsed; this is subject to a condition that such group of shareholders shall convene the meeting within 45 days from the previous 45-day due date. Nevertheless, the quorum conditions remain unchanged; there shall be, (a) at least 25 shareholders or not less than one half of the total number of shareholders, and (b) such group of shareholders should hold shares of not less than 1/3 of the total number of shares sold, and be present at the meeting to constitute a quorum.

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Also, it is to be noted that in the case where the meeting, convened by the group of shareholders under the new law, meets the requirement of the quorum, the company shall pay any expense incurred from the meeting. At the same time, if the quorum requirement is not met, such meeting shall be cancelled and the shareholders who called for the meeting shall cover the expenses themselves.

### **Note**

In summary, the newly amended section 100 of the Public Company Act B.E. 2535 (1992) equips shareholders with expanded capabilities for convening the EGM. The current changes to the Act also become important in the case where there is a disagreement among shareholders and the BOD. It is thus, critical, for companies and especially the shareholders to be aware of and understand, changes under Section 100, of the Public Company Act.

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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed to the right.