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Amendments to Public Limited Companies Act of 1992

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Background

On 28 February 2022, the Senate adopted a resolution approving a bill of proposed amendment to the current Public Limited Companies Act of 1992 (the “**Bill**”) so as to accord with current circumstances by recognizing the use of electronic methods in the operation of a public limited company (“**PLC**”). Further, the Bill proposes other measures to facilitate the management of a PLC, e.g., a solution for failure by the chairman of a board of directors (“**BOD**”) to perform the duty to call for a board of directors meeting (“**BDM**”).

Details of the amendments

The key amendments are summarized as follows:

1. Electronic publication of notice, statement or advertisement of information of a PLC

The current principle under the Public Limited Companies Act of 1992 (the “**PLCA**”) is that any notice, statement or advertisement of information in respect of a PLC that is required to be published in a newspaper shall be made in a daily local newspaper in the Thai language for at least three (3) consecutive days, or, in the case of the non-existence of the said local newspaper, a Bangkok daily newspaper in the Thai language.¹

The aforementioned is now considered (i) to cause unnecessary costs to businesses, (ii) to limit communication channels of PLCs and (iii) not to be consistent with current business practices and human behavior. In particular, many companies choose to publish their notices in newspapers which are not truly available in the market – this is inconsistent with the intention of the law. Therefore, the Bill proposes that the publication of notice, statement or advertisement of information of the PLC can, as an alternative to the traditional method of local newspaper, be effected through electronic methods. Although the details of such electronic methods will be further prescribed by the registrar,² we understand that these will likely include publication through the respective websites of the PLC itself, an online newspaper or of a government agency.

2. Electronic delivery of letters or documents to the directors, shareholders or creditors of a PLC

Currently, when any person has an obligation under the PLCA to deliver letters or documents to another person, the delivery of such letters or documents shall be conducted (i) by direct delivery to such person or to his/her representative; or (ii) by registered mail to the address on record or the domicile of the recipient (as the case may be).³

The aforementioned have been found (i) to cause unnecessary costs to businesses and (ii) to delay the document delivery process. For example, the costs for design and publication of annual reports or financial statements, and for delivery by post by registered mail, are relatively high on each occasion of the relevant

¹ Section 6 paragraph 1 and 2 of the PLCA

² Section 6 paragraph 3 of the proposed amendment to the PLCA

³ Section 7 of the PLCA

meeting of the PLC. Therefore, the Bill will replace those traditional methods with the method of electronic delivery (e-delivery) of any documents, particularly delivery from the PLC or its BOD to the following recipients:⁴

- directors;
- shareholders; or
- creditors.

However, the above recipients must declare their intention or express consent to the PLC to receive letters or documents by e-delivery. This is to ensure that those recipients are fully aware of the e-delivery of documents, in order to protect their rights. Although the details will be further prescribed by the registrar,⁵ it is likely that the principles under the current law governing electronic transactions will be applied.⁶

3. Electronic meetings for BDMs and shareholders' meetings

After the Emergency Decree on Electronic Meetings of 2020 becomes effective, any meeting required by laws, including meetings of shareholders and BDMs, can be duly held electronically. However, it is still unclear if this principle is applicable to PLCs. Therefore, the Bill will affirm the principle that BDMs and the shareholders' meetings may be held by electronic methods, provided that (i) the electronic meetings must be in accordance with the Emergency Decree on Electronic Meetings of 2020 and other relevant laws; and (ii) there is no specific restriction under the Articles of Association of the PLC.⁷ According to a response of the Electronic Transactions Development Agency (ETDA), Ministry of Digital Economy and Society, to frequently asked questions publicly available in Thai at its website,⁸ it is also possible to hold the meeting in a hybrid method, i.e. part of attendants may attend the meeting in person or online. In addition, for the purpose of identification of jurisdiction in the case of any dispute arising out of electronic-form BDMs and shareholders' meetings, the location of the head office of the PLC shall be deemed to be the location of the relevant electronic meeting.⁹

To be consistent with the legalization of e-meetings for shareholders, the Bill proposes to allow a proxy¹⁰ to be made by using electronic methods as alternatives which shall be safe and reliable to ensure that the proxy is undertaken by the shareholders, and made in compliance with the requirements which will be further prescribed by the registrar.¹¹ In this regard, it is likely that the principles under the current law governing electronic transactions will also be applied.

4. Additional method to convene BDM

At present, the chairman of the BOD can convene, or at least two (2) directors can jointly request the chairman of the BOD to convene, a BDM within fourteen (14) days from the date of request.¹² However, the PLCA is silent in respect of the case where the chairman of the BOD cannot convene the BDM or does not convene the meeting as requested. As a result, the BOD is not able to make a decision in relation to the matter, which would cause a severe adverse effect on the PLC's business – especially if there is an internal dispute at the PLC.

To resolve such difficulties, the Bill provides for two (2) scenarios as follows:

⁴ This new delivery method includes a notice in relation to Section 100, paragraph 2 of the PLCA (i.e. a shareholders' meeting where a group of shareholders is entitled to convene such meeting because the BOD fails to perform such duty). In this case, the group of shareholders who are entitled to convene the shareholders' meeting can send the notice of the shareholders' meeting by electronic methods as well.

⁵ Section 7/1 of the proposed amendment to the PLCA

⁶ Further details of the electronic documentation are available in our newsletter here:

<https://www.noandt.com/en/publications/publication20810>

⁷ Section 79 paragraph 2 and Section 98 paragraph 3 of the proposed amendment to the PLCA

⁸ <https://www.eta.or.th/th/%E0%B8%95%E0%B8%94%E0%B8%95%E0%B8%AD%E0%B9%80%E0%B8%A3%E0%B8%B2/%E0%B8%84%E0%B8%B3%E0%B8%96%E0%B8%B2%E0%B8%A1%E0%B8%97%E0%B8%9E%E0%B8%9A%E0%B8%9A%E0%B8%AD%E0%B8%A2/emeeting.aspx>

⁹ Section 79 paragraph 2 and Section 101 paragraph 3 of the proposed amendment to the PLCA

¹⁰ Under the current PLCA, a proxy for the shareholders' meeting shall be made in writing and physically submitted to the chairman of the BOD or the person designated by the chairman of the BOD prior to the meeting (Section 102 of the PLCA and Clause 2.1 of the Notification of the Department of Business Development re: Proxy and voting by proxy, delivery of notice of shareholders' meeting of public limited company dated 4 February 2013)

¹¹ Section 102 paragraph 3 of the proposed amendment to the PLCA

¹² Section 81 of the PLCA

- In the case that the chairman of the BOD does not convene the meeting within fourteen (14) days from the date of legitimate request, the directors can jointly convene the BDM by themselves within fourteen (14) days after the lapse of the said 14-day period;¹³ and
- In the case where there is no chairman of the BOD at the PLC for any reason, the vice chairman of the PLC shall convene the BDM, and in the case where there is no vice chairman present for any reason, at least two (2) directors may jointly convene the BDM.¹⁴

5. Shortening of the notice period in respect of BDM

For ease of preparation of the necessary documents and consistency with the electronic notice under the proposed Section 7/1 of the Bill, the Bill proposes to reduce the minimum notice period in respect of the BDM from seven (7)¹⁵ days to three (3) days. In addition, in case of necessity or urgency for the purposes of protecting the rights or entitlements of the PLC, convocation of the BDM can be made by other means, and a shorter notice period is possible.¹⁶

Next steps

The Bill will now be submitted to the King for His Royal Signature and published in the Government Gazette. In addition, on 24 March 2022, the Department of Business Development, Ministry of Commerce has published the three (3) draft Notifications of the Department of Business Development issued under the Bill for public hearing from 24 March to 8 April 2022. In summary, the Notifications stipulate the details concerning: (i) the issuance of any notice, statement or advertisement of information by electronic methods set forth in item No. 1 above; (ii) criteria on the delivery of letters or documents by electronic methods set forth in item No. 2 above; and (iii) the electronic proxy set forth in item No. 3 above. Since the exact timeline cannot be predicted at this moment, we will closely monitor, and keep you updated on, the progress of this matter.

¹³ Section 81 paragraph 2 and 3 of the proposed amendment to the PLCA

¹⁴ Section 81/1 of the proposed amendment to the PLCA

¹⁵ Section 82 of the PLCA

¹⁶ Section 82 of the proposed amendment to the PLCA

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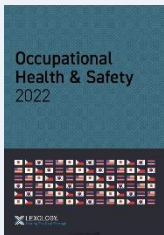
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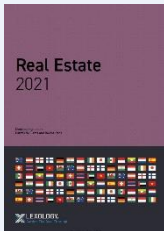
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