



# Legal News Update

KPMG in Thailand



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## Introduction of a New Business Combination Type and Other Changes in the Thai Civil and Commercial Code (“CCC”)

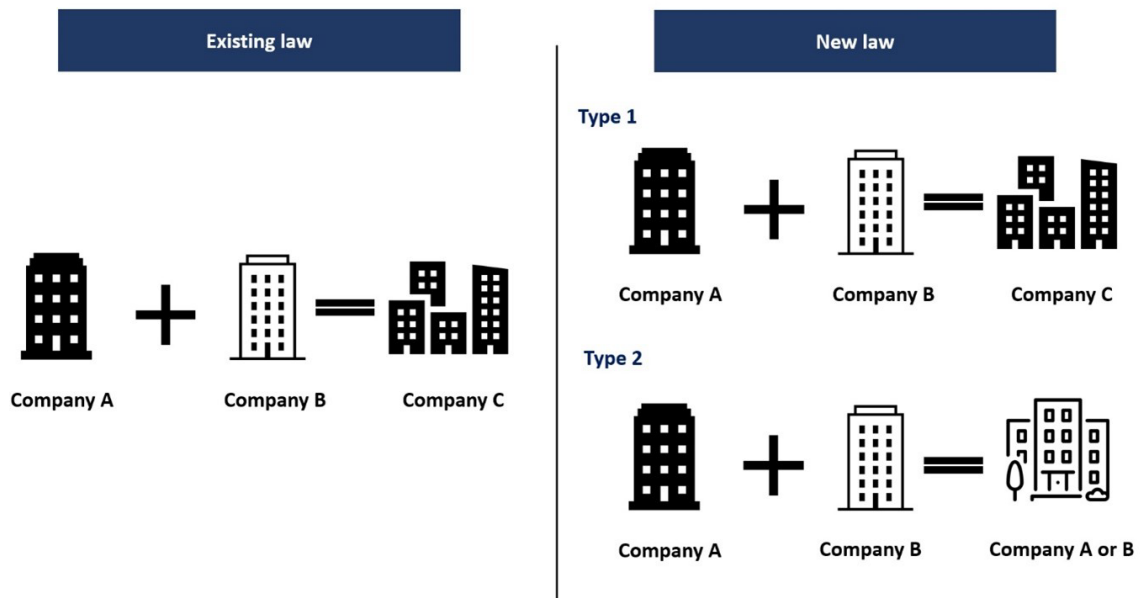
The Senate of Thailand has recently approved the draft act amending the CCC (the “**Amendments**”). The Amendments shall enhance and simplify business operations in Thailand by amending existing corporate laws mainly to provide: 1) a new type of business combination; and 2) clearer explanations on a private limited company’s corporate governance.

The Amendments shall be presented to H.M. the King for final enactment and will take effect 90 days after its publication in the Royal Gazette.

### New Type of Business Combination in Summary

Presently, the CCC specifies only one type of business combination which is a combination of two or more companies into a new entity in which none of the pre-existing companies survive.

The Amendments expand a new type of business combination in which two or more companies are combined and any one of the companies can be the surviving entity.



**Key Amendments to CCC**

	Existing laws	Amendments
<b>Business Combination</b>		
<b>Business combination</b>	There is <u>only one type of business combination</u> in which combination of two or more companies into a new entity in which none of the pre-existing companies survive.	Two or more companies shall be combined in one of the following types: (1) Combination into a new entity in which none of the pre-existing companies survive; (2) One of combining companies still survives while the other will cease to be juristic persons.
<b>Protection measure for a shareholder who objects to the business combination</b>	None	The company is required to arrange for a person to purchase the shares of the shareholder who objected to the business combination resolution at the agreed-upon price or a price determined by an appraiser.  If such shareholder does not accept the purchase offer within 14 days of receipt, the company may proceed with the business combination, and such shareholder will become an automatic shareholder of the combined company.
<b>Period for creditors' objections</b>	60 days from the notification date	1 month from the notification date
<b>Period for the joint shareholders' meeting to consider the establishment of the combined company (the "Joint Shareholders' Meeting")</b>	None	It must be held within 6 months from the last combining shareholders' meeting resolving the business combination, unless extended by the Joint Shareholders' Meeting but no later than 1 year.
<b>Criteria on the Joint Shareholders Meeting</b>	None	(1) Agendas to be considered at the Joint Shareholders' Meeting are specified, e.g. name of the combined company, objectives, appointment of directors and auditor, etc. (2) The Joint Shareholders' Meeting shall be held at a location or nearby province where one of the combining companies has its headquarters, and in which: <ul style="list-style-type: none"> <li>a quorum is constituted when shareholders representing at least half of each combining company's total shares attend the Joint Shareholders' Meeting;</li> <li>attending shareholders shall elect one shareholder to be a chairman; and</li> <li>agendas shall be resolved by the majority vote of the attending shareholders unless otherwise agreed.</li> </ul>
<b>Period to handover the business</b>	None	within 7 days after the date of completion of the Joint Shareholders' Meeting.
<b>Other Amendments</b>		
<b>Minimum number of promoters</b>	3 promoters	2 promoters
<b>Request of company dissolution to the court</b>	A private limited company will be eligible to request the court to dissolve the company if the number of shareholders is <u>less than 3</u> .	A private limited company will be eligible to request the court to dissolve the company if <u>only 1 shareholder remains</u> .
<b>Quorum requirement for shareholders' meeting</b>	Shareholders representing at least one-fourth of the company's capital are required to constitute the quorum of the shareholders' meeting.	(1) shareholders representing at least one-fourth of the company's capital and (2) at least two shareholders (or their proxies) are required to constitute the quorum of the shareholders' meeting.
<b>Validity of Memorandum of Association prior to registration of company establishment (the "MOA")</b>	10 years after the date of registration of the MOA	3 years after the date of registration of the MOA
<b>Share certificate</b>	A director's signature is required	Both a director's signature and <u>the company's seal (if any)</u> are required.
<b>Notice convening the shareholders' meeting</b>	1. Delivery of the notice to all company's shareholders by registered mail; and 2. Publication in a local newspaper	Delivery of the notice to all company's shareholders by registered mail is only required.  Publication in a local newspaper or electronic means according to criteria specified under the ministerial regulation is required only in case the company has issued share certificates to a bearer.

## Transition Periods

The Amendments provide for certain key transition periods as follows:

Issues	Transition Period
The MOA	The Amendments regarding the validity of the MOA will be exempted for 180 days after the effective date of the Amendments (the "Effective Date") if the MOA is registered but the registration of company establishment under such MOA has not been completed prior to the Effective Date.
The Business Combination	If the shareholders' meeting approving the business combination is held prior to the Effective Date, the combining companies may proceed with the business combination in accordance with current law.

### How can KPMG Law assist you?

In our view, the Amendments will stimulate business operations in Thailand with a new option of business combination and more flexibility due to the other changes in corporate provisions under the CCC. Our team at KPMG Law has experts in the areas of mergers and acquisitions including corporate and commercial who can assist and guide you through the amended CCC.

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