

Significant Changes on Director's Proxy and Circular Board Resolution

This article provides brief information and current practice on the board of Directors meeting of a limited company under the Thai Civil and Commercial Code ("CCC"), specifically on the Director's proxy and the circular board resolution. Previously, the Department of Business Development ("DBD"), a government agency responsible for the registration of partnerships and companies, accepted the concept of Director's proxy and the circular board resolution until September 2008, DBD issued its ruling ("Ruling") which had a significant legal implication on Director's proxy and the circular board resolution as follows:

1. Director's Proxy

The DBD clearly ruled out that a limited company can not stipulate the provision which allows the company's Director to authorise other persons to attend and vote in the board of Directors meeting in its Articles of Association ("AOA"). The proxy of this director is disregarded for counting a quorum of the meeting. This Ruling is made in line with the Supreme Court's Decision that the qualifications of a Director are an exclusive matter and a Director can not authorise another person to act on his behalf for matters exclusively reserved for a company's Director.

2. Circular Board Resolution

The Ruling also mentioned that any circular board resolution without the actual meeting being convened is not considered as a valid resolution and such a provision can not be fixed in the AOA. Pursuant to the DBD's interpretation, the circular board resolution provision circumvents the procedure and requirement on the board of Directors meeting prescribed under the CCC, which requires the in-person meeting only.

3. Effect of Ruling

For the existing AOA, the DBD considers that the provision on Director's proxy and circular board resolution stipulated in such AOA shall be impractical. Furthermore, the DBD will reject a new AOA containing those provisions and request the AOA to be amended in accordance with the Ruling.

4. Tele / Video Conference

Currently, there is no provision under the CCC on the Tele / Video Conference for the board of Directors meetings. Nonetheless, in August 2009 the cabinets agreed in principle to approve the Bill on CCC Amendment, which will relax the requirement of the board of Director meeting by allowing the Director to hold the meeting communicated via technology, such as teleconference and videoconference.

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