



Legal Alert

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Draft Amendment of the Civil and Commercial Code regarding Partnerships and Companies

The Senate has recently approved the Draft Act on Amendment of the Civil and Commercial Code (the “CCC”), which will amend some of the key provisions regarding partnerships and companies, aiming to modernize the CCC to accommodate contemporary and flexible corporate practices.

Let us highlight the key ones for your attention as follows;

- Formation of a Limited Company
- General Meetings
- Dividends
- Causes for Dissolution of Companies
- Merger of Limited Companies

1. Formation of a Limited Company

The draft amendment of the CCC seeks to amend the provisions relating to the formation of a limited company, including Section 1097, which under the existing law requires at least 3 persons to form a limited company. Under the draft amendment, the number of persons required to establish a limited company is **reduced from 3 persons to only 2 persons.**

2. General Meeting

The procedure is less cumbersome under the draft amendment. Current Section 1175 requires a notice of a general meeting, whether it is an Annual General Meeting (“AGM”) or Extraordinary General Meeting (“EGM”), to be published at least once in a local newspaper and sent by registered mail to every shareholder whose name appears in the register of the company, the result of the draft amendment will relieve the company’s requirement to cease publishing the notice letter to the local newspaper, leaving such requirement only to the company with bearer share certificates. With this new provision,

companies can reduce publication process since few companies have bearer share certificates and where publication is necessary the company can choose to publish in a local newspaper or electronically. The details of how electronic publication should be conducted will be in the ministerial regulation to be issued under the revised Section 1175.

Under Section 1178 of the CCC, for any business discussion to take place in a general meeting, shareholders representing at least a quarter of the capital of the company must be present at such meeting. The draft amendment will clarify the number of shareholders that at least 2 shareholders or proxies acting on behalf of such shareholders, representing of at least a quarter of the capital of the company. This amendment clarifies the practice that a minimum of 2 shareholders is required for any general meetings, and that a sole shareholder with the qualifying shareholding will not be sufficient.

3. Dividends

The current provision relating to the payment of dividends provides that payment of dividends shall be made within 1 month from the date of the resolution of the general meeting or of the directors, as the case may be. In which the draft amendment clarifies that such payment of dividends must be made **in full** within 1 month from the date of the resolution of the general meeting or of the directors, as the case may be.

4. Causes for Dissolution of Companies

The CCC lists out certain circumstances, where a court may order the dissolution of a limited company. The current Section 1237 provides causes for dissolution, amongst others, if number of shareholders reduced to less than 3 persons, in which the draft amendment will change to only one.

5. Merger of Limited Companies

One of the most prominent changes brought about by the draft amendment is introducing a concept of merger in addition to amalgamation of companies. This amendment was an attempt to reconcile the CCC with international corporate and merger & acquisition practices as well as to modernize the provisions contained therein.

The new provisions will allow companies to consolidate in 2 ways, namely by (i) amalgamation (where a new entity is established, and the amalgamated entities cease to exist) and (ii) merger (where a company merges with one or more companies with 1 company retaining its juristic entity and the remaining company(ies) cease to be a juristic entity). Currently the CCC recognizes only the first one: the 'amalgamation'. Under the draft amendments both cases will require a special resolution, and such special resolution must be registered within 14 days from the date the special resolution is passed.

Deloitte's observation

The draft amendment, once effective, will allow the CCC to align itself with contemporary corporate practices, as well as modernize the provisions of the CCC. The draft amendment will also allow companies access to tools not currently available to them under the current version of the CCC which will help companies discharge their obligation more effectively and efficiently (e.g. lessen publication in newspapers of notice to shareholders). Further, one of the key changes to the CCC under the draft amendment relates to the merger of companies, which is the first time that this concept will be introduced.

The draft amendment has been approved by the Senate in its third and final session and the House of Representatives has completed consideration it on 14 September 2022 and should soon be promulgated.

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