



## Legal Alert

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### Merger of Limited Companies under the Amended Civil and Commercial Code (No. 23) B.E. 2565

On 8 November 2022, the Royal Thai Government Gazette announced the Act Amending the Civil and Commercial Code (No. 23) B.E. 2565 (the “CCC”) which has now come into effect from 7 February 2023 onwards. Deloitte Legal Alert provided a comprehensive summary of the significant changes to the Partnerships and Companies sections under the CCC in a Legal Alert published on 22 September 2022 [th-legal-alert-19-sep-2022-en.pdf \(deloitte.com\)](#). In this Alert, we will focus on the amendments made to the Merger of Limited Companies.

#### Updated regulations regarding the Merger of Limited Companies.

The Act Amending the Civil and Commercial Code (No. 23) B.E. 2565 expanded types of consolidation of Limited Companies under the CCC. Prior to this revision, the CCC recognized only one type of merger, which is amalgamation, by forming a new company as a result of combined companies in which those would be dissolved by law. The revised CCC currently adopted two following types of Mergers, providing companies greater flexibility in consolidation:

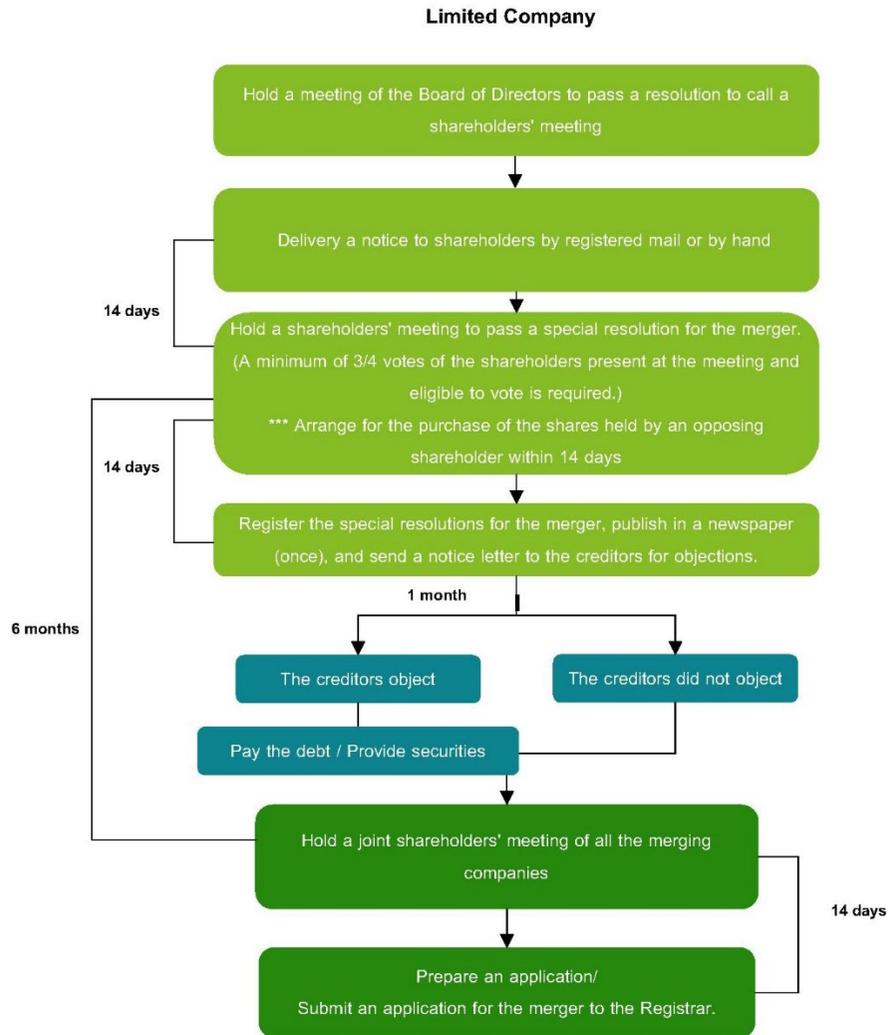
- 1) Merger into a new company in which such amalgamated entities will be dissolved; and
- 2) Merger where one company will be a surviving entity while the other merged companies will be dissolved.

The procedures for implementing both types of merger under the amended CCC are the same but added certain significant procedures from the previous CCC, which is also in line with the Public Limited Companies, which is the requirement for the special resolution of shareholders' meetings whereby the company is obligated to arrange for a buyout of any objected shareholders in relation to the proposed Merger at a mutually agreed-upon price, and if unable to have an

agreed price, an independent appraiser will be appointed to determine the value of the shares. If the opposing shareholder refuse to sell their shares within 14 days from the date of receipt of the tender offer, the company may proceed with the Merger, and such opposing shareholders shall be deemed to be shareholders of the merged company (Section 1239/1).

The fundamental principle of Merger, as prescribed by the updated CCC, mandates that all assets, liabilities, rights, obligations, and accountabilities of the merged entity shall be transferred to the merged entity. In other words, the transfer shall occur by operation of law.

Deloitte outlined the key procedures as follows:



### Deloitte's Observation

To summarize, this amendment recognizes a new type of consolidation whereby one company will be a surviving entity while the other merged companies will be dissolved in addition to the previously well-known amalgamation, where the amalgamated companies are dissolved and become a newly amalgamated company.

The new merger, which the business will be automatically transferred by the CCC, has many advantages, for example, there is no need to ask for a new license for business operation, nor waiting time for disputed cases at the court to be concluded.

For the Entire Business Transfer ("EBT") which was made by an agreement between the transferor and the transferee, there shall not be any automatic transfer by law, and requires the registration of the dissolution and liquidation of the transferor to comply and satisfy with tax requirements. The Department

of Business Development (“DBD”) is of the view that the EBT by an agreement between the transferor and the transferee, which was based on contractual agreement basis, is still applicable. However, Deloitte has an opinion that the DBD should issue an official clarification because this amendment causes confusion whether it is mandatory or optional for business operators.

Although the EBT by an agreement between the transferor and the transferee cannot enjoy the benefits as mergers under the CCC, it is still beneficial in some matters. For example, it would satisfy shareholders of the transferor who wish to receive the consideration from the sale of the business and prefer not to remain as shareholders of the legal entity etc. However, business operators should carefully consider and study other relevant legal aspects, including contract, investment promotion law, foreign business law, labour law, property law, and tax laws, in order to determine which type of mergers would be the most appropriate and beneficial for their business.

In this regard, Deloitte is equipped to assist in both advisory and implementation to solve relevant issues, including to prepare an analysis for business operators to make a decision and determine the appropriate type of merger that would be most suitable to the business and goal in legal, tax and financial standpoints. Those interested can contact Deloitte at the provided contact details below for further assistance.

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For more information and how Deloitte can help you, please contact:

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