

Order of the Head of the National Council for Peace and Order

No. 21/2560

On Amendments of Laws to Facilitate the Ease of Doing Business

Whereas Thailand ranks 46th in the World Bank Ease of Doing Business report out of 190 countries despite the Government's efforts to improve the environment for doing business which includes establishing accelerative measures, and improving operational process and services in various sectors in compliance with the World Bank report. It is found that certain conditions that create prominent problems and obstructions are the complexity and complication of criteria, procedures, conditions, steps, and time periods imposed by numerous laws, rules and regulations. Therefore, it is necessary to amend some provisions of the laws which have major impacts to promote and facilitate the ease of doing business as well as to help Thailand to rise in the rankings in the next evaluation of the World Bank, including to boost the country's competitiveness and to increase the opportunity of Thailand becoming an effective investment hub, which will contribute to the reform and the economic security of the country.

By virtue of Section 44 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014), the Head of the National Council for Peace and Order, with the approval of the National Council for Peace and Order, hereby issued the following order:

1. Section 1016 of the Civil and Commercial Code shall be repealed and replaced by the followings:

“Section 1016 Registration of partnerships and companies, any alterations subsequently made in the registered particulars, and any other matter required to be registered by the provisions under Title 22 Partnerships and Companies, shall be made to the Registrar at the Office of the Company Limited and Partnership Registration as determined by announcement issued by the competent Minister.”

2. The followings shall be added to Section 1020/1 of the Civil and Commercial Code:

“Section 1020/1 The competent Minister shall have the power to issue ministerial regulation to reduce or exempt the fees under section 1018 and section 1020.”

3. Section 1108 (1) of the Civil and Commercial Code shall be repealed and replaced by the followings:

“(1) the adoption of the regulations of the Company, which may also include regulation on how to deal with board or shareholders matters or unresolved disputes”

4. Section 1128 of the Civil and Commercial Code shall be repealed and replaced by the followings:

“Section 1128 Every share certificate shall be signed by at least one of the directors.”

5. The followings shall be added to paragraph four of Section 1201 of the Civil and Commercial Code:

“Payment of dividends shall be made within one month from the date of the resolution of the general meeting or of the meeting of the board of directors, as the case may be.”

6. The followings shall be added to Section 1237 (5) of the Civil and Commercial Code:

“(5) when there is any other cause making the continuance of the company an impossibility.”

7. Section 108 of the Labour Protection Act B.E. 2541(1998) shall be repealed and replaced by the followings:

“Section 108 An Employer who employs a total of ten or more persons shall provide workrules in Thai language and the rules shall contain at least details on the followings:

- (1) working days, normal working time and rest periods;
- (2) holidays and rules on taking holidays;
- (3) rules governing overtime work and holiday work;
- (4) date and place of payment of wages, overtime pay, holiday pay and holiday overtime pay;
- (5) leave and rules on taking leave;
- (6) discipline and disciplinary measures;
- (7) complaints; and
- (8) termination of employment, severance pay and special severance pay.

“The Employer shall announce and apply the work rules within fifteen days of the date that the Employer employs a total of ten or more persons; and the Employer shall at all times retain a copy of such rules at the place of business or at the Employer’s office.

“The Employer shall disseminate and conspicuously post the work rules at the work place of the Employees for the Employees’ information and acknowledgement so that the Employees shall be able to conveniently check the rules.”

8. Section 110 of the Labour Protection Act B.E. 2541(1998) shall be repealed and replaced by the followings:

“Section 110 Whereas there is any amendment to the work rules, the Employer shall announce the amended rules within seven days from the date of the application of the amended rules. Paragraphs two and three of Section 108 shall be applied, *mutatis mutandis*.”

9. Section 100 of the Public Limited Companies Act B.E. 2535 (1992) shall be repealed and replaced by the followings:

“Section 100 One or more shareholders holding the aggregate number of shares of not less than ten percent of the total number of shares sold may, by subscribing their names, request the board of directors in writing to call an extraordinary meeting at any time, but the reasons for calling such meetings shall be clearly stated in such request. In this regard, the board of directors shall proceed to call a meeting of shareholders to be held within forty-five days as from the date the request in writing from the shareholders is received.

“In case the board of directors fails to arrange for the meeting within such period under paragraph one, the shareholders who have subscribed their names or other shareholders holding the required aggregate number of shares may themselves call the meeting within forty-five days as from the date of expiration of the period under paragraph one. In such case, the meeting is deemed to be shareholders’ meeting called by the board of directors and the Company shall be responsible for necessary expenses as may be incurred in the course of convening such meeting and the Company shall reasonably provide facilitation.

“In the case where, at the meeting called by the shareholders under paragraph two, the number of the shareholders presented does not constitute quorum as prescribed by section 103, the shareholders under paragraph two shall jointly compensate the Company for the expenses incurred in arrangements for holding that meeting.”

10. Section 128 of the Public Limited Companies Act B.E. 2535 (1992) shall be repealed and replaced by the followings:

“Section 128 One or more shareholders holding shares in the aggregate number of not less than five percent of the total number of shares sold may, by subscribing their names, make an application in writing to the Registrar for appointing inspectors for the purposes of inspecting the business and financial standing of the Company, which may include inspecting the conduct of business of the board of directors.

“In the application under paragraph one, the applicants must clearly indicate the issues in respect of which the inspection is to be conducted and must also nominate the name and address of one shareholder who shall represent them.

“If the Registrar considers that there is a reasonable cause, the Registrar shall appoint one or more officers to be inspector or inspectors and the Registrar must clearly indicate the issues in respect of which the inspection is to be conducted in the appointment order.”

11. The followings shall be added to Section 84/2 of Title 4 Competent Officials, and Inspection and Regulations, of the Social Security Act B.E. 2533 (1990):

“Section 84/2 By reason of force majeure or any other reason of necessity, the Minister with the approval of the Cabinet may extend or postpone the period under section 39 or section 47 as may be appropriate or necessary.”

12. (6) of paragraph one of Section 90/12 of the Insolvency Act B.E. 2483 (1940) as amended by the Insolvency Act (No. 4) B.E. 2541 (1998) shall be repealed and replaced by the followings:

“(6) secured creditor shall not exercise enforcement for payment of the debt against property given as security unless upon permission by the Court receiving the petition or upon expiration of a period of one year from the date the Court has issued an order accepting the petition. The Court may extend such period on not more than two occasions for a period not exceeding six months for each occasion;”

13. The followings shall be added to Section 90/14 *bis* of the Insolvency Act B.E. 2483 (1940):

“Section 90/14 *bis* If the property given as security is of perishable nature, or the delay will involve a risk of loss or costs incurred will exceed the value of such property, a secured creditor may proceed to sale such property and hold the money as security in place of the property.”

14. Section 90/46 of the Insolvency Act B.E. 2483 (1940) as amended by the Insolvency Act (No. 4) B.E. 2541 (1998) shall be repealed and replaced by the followings:

“Section 90/46 The resolution approving the plan must be:

- “(1) a resolution of a meeting of each and every group of creditors not being the group of creditors under section 90/46 *bis*, approved by a majority of the creditors and having the aggregate amount of debts owed to such creditors not less than two-third of the total debts owed to the creditors attending the meeting of creditors in person or by proxy and voting on such resolution; or
- “(2) a resolution of a meeting of at least one group of creditors not being the group of creditors under section 90/46 *bis*, approved by a majority of the creditors and having the aggregate amount of debts owed to such creditors not less than two-third of the total debts owed to the creditors attending the meeting of creditors in person or by proxy and voting on such resolution and when computing the amount of debts, the aggregate amount of the debts of the creditors voting to approve in all meetings of every group of creditors represents not less than fifty percent of the total debts owed to the creditors attending the meeting of creditors in person or by proxy and voting on such resolution.

“In the computation of the amount of debts, it shall be deemed that the creditors under section 90/46 *bis* have also attended the meeting and voted on the resolution approving the plan.”

15. The followings shall be added to Section 148/1 of Part 2 Powers and Duties, Chapter 5 Receiver, of the Insolvency Act B.E. 2483 (1940):

“Section 148/1 If any provision of this Act requires the Receiver to publish the Court’s order or decision, or the Receiver’s announcement or order in daily newspaper, the Receiver may, instead, advertise through other public electronics media as may be determined by announcement issued by the Director-General of the Department of Public Prosecution.”

16. Section 173 paragraph two of the Insolvency Act B.E. 2483 (1940) shall be repealed and replaced by the followings:

“For the purpose of this section, it shall *prima facie* be presumed that when the Receiver has published a receivership order in the Government Gazette and in a daily newspaper or advertisement through other public electronics media, every person has had the knowledge of such order.”

17. In case the laws, rules, or regulations stipulate that a person who applies for approval, permission or permit, files for registration or declaration, or notifies must make use of documents issued to him by officials as accompanying document for consideration or proceeding, it shall be the duty of the person having the authority to approve, grant permission, issue permit, register, receive declaration or notification, to arrange for the department issuing such official documents to send information or copy of the documents as accompanying document for consideration or proceeding. If the person having such authority wishes to have a copy of the documents from the person who applies for approval, permission or permit, files for registration or declaration, or notifies, the person having the authority shall himself make the copy of such documents. For the purpose of this matter, the person who applies for approval, permission or permit, files for registration or declaration, or notifies shall not be charged for any expenses in the copying of such documents.

18. This Order shall come into force on the date of its publication in the Government Gazette.

Ordered on 4 April B.E. 2560 (2017)

General Prayut Chan-o-cha

Head of the National Council for Peace and Order