

# Thai Civil & Commercial Code: A Comparison of the Current and the Revised Provisions on "Juristic Persons"

Translation and Commentary by



**Tilleke & Gibbins**

March 2008

<p style="text-align: center;"><b>Civil &amp; Commercial Code Book III promulgated by the Royal Decree given on January 1 B.E. 2471 (A.D. 1928)</b></p>	<p style="text-align: center;"><b>Amendment to the Civil &amp; Commercial Code (No. 18) B.E. 2551 (A.D. 2008), published on March 3, 2008 and effective from July 1, 2008</b></p>	<p style="text-align: center;"><b>Essentials of Amendments</b></p>
<p><b>Section 1020.</b> Every person is entitled to inspect the document kept by the Registrar, or <i>to require a certificate of the registration of any partnership or company</i>, or a certified copy or extract of any other document, to be delivered to him by the Registrar, on payment of such fee <i>as may be prescribed by the regulations issued by the competent Minister</i>.</p>	<p><b>Section 1020.</b> Every person is entitled to inspect the document kept by the Registrar or to request for a certified copy or extract of any other document, on payment of such fee <i>as may be prescribed in the Ministerial Regulations</i>.</p> <p><i>Any interested person of a partnership or company</i> is entitled to require a certificate of registration of the partnership or company to be delivered to him by the Registrar, on payment of such fee as may be prescribed in the Ministerial Regulations.</p>	<ul style="list-style-type: none"> <li>• Only "<i>interested persons</i>" of the partnership/company (instead of "<i>every person</i>" as provided in the current law) can request for the certificate of registration of the partnership/company.</li> <li>• Inspection and request for a certified copy or extract of any other document can still be requested for by "every person".</li> <li>• Payments of fees are "<i>as may be prescribed in the Ministerial Regulations</i>" (instead of "<i>as may be prescribed by the regulations issued by competent Minister</i>").</li> </ul>
<p><b>Section 1023.</b> <i>Until such publication has been made</i>, no advantage may be taken by the partners, the partnership or the company against third persons of the existence of the agreements, documents or particulars required by this Title to be registered, but third persons may take advantage of such existence.</p> <p>However, the partner or shareholder who, and the partnership or company which, has, before such <i>publication</i>, received performance of an obligation is not bound to make restitution.</p>	<p><b>Section 1023.</b> <i>Until such registration has been made</i>, no advantage may be taken by the partners, the partnership or the company against third persons of the existence of the agreements, documents or particulars required by this Title to be registered, but third persons may take advantage of such existence.</p> <p>However, the partner or shareholder who, and the partnership or company which, has, before such <i>registration</i>, received performance of an obligation is not bound to make restitution.</p> <p><u>Added:</u> Section 1023/1</p> <p><b>"Section 1023/1.</b> No partnership or company may use Section 1023 to avoid its liability to third persons who act in good faith by arguing that the partner, partnership, company or director had no authority to act."</p>	<p>No advantage may be taken by the partners/partnership/company against third persons of the existence of the agreements, documents or particulars required by law to be registered, "<i>until such registration has been made</i>". However, the partners/shareholders/partnership/company are not bound to make restitution for the performance of an obligation received before "<i>the registration</i>" (instead of "<i>publication in the Government Gazette</i>").</p> <p>Conversely, third persons remain entitled to take advantage of any unregistered agreements, documents or particulars. In addition, Section 1023/1 is added to protect the rights of bona fide third persons who have relied on the registered particulars, and the partnership/company is precluded from using Section 1023 to deny its liability to them.</p>

<p><b>Section 1097.</b> Any <i>seven</i> or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company.</p>	<p><b>Section 1097.</b> Any <i>three</i> or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company.</p>	<p>The minimum number of promoters/founders of a limited company is changed from <i>seven</i> to <i>three</i>.</p>
<p><b>Section 1111. Paragraph 5</b> The directors must at the same time deposit with the Registration Office ten printed copies of the memorandum and of the regulations, if any, of the company.</p>	<p><u>Repealed:</u> <b>Section 1111. Paragraph 5</b></p> <p><u>Added:</u></p> <p>“<b>Section 1111/1.</b> In forming a company, the directors may, upon completing all the following steps on the day the memorandum of association is made by the promoters, apply for registration of the memorandum of association and registration of the company on the same day.</p> <ol style="list-style-type: none"> <li>(1) have all shares to be registered by the company subscribed;</li> <li>(2) hold a statutory meeting to consider the business as provided in Section 1108, the meeting being attended by all promoters and subscribers and the business to be transacted at the meeting being approved by all promoters and subscribers;</li> <li>(3) have the promoters hand over the business to the directors; and</li> <li>(4) have the directors cause the subscribers to pay the amount for each share as provided in Section 1110 paragraph two and the amount is actually paid.”</li> </ol>	<p>Section 1111/1 is added to allow the registration of company incorporation to be made on the same day as the registration of the memorandum of association (subject to full compliance with the required procedures). Currently, the incorporation of the company can be registered at least 7 days after the registration of the memorandum of association.</p>
<p><b>Section 1147.</b> Ten printed copies of every new regulation or of the altered memorandum or regulations shall be deposited at the same time at the Registration Office.</p>	<p><u>Repealed:</u> <b>Section 1147.</b></p>	
<p><b>Section 1175.</b> Notice of the summoning of every general meeting shall either be published at least twice in a local paper, not later than seven days before the date fixed for the meeting, or shall be sent by post not later than seven days before the date fixed for the meeting to every shareholder whose name appears in the register of shareholders.</p> <p>The notice shall specify the place, the day and the hour of meeting and the nature of the business to be transacted.</p>	<p><b>Section 1175.</b> Notice of the summoning of every general meeting shall be published <i>at least once</i> in a local paper not later than seven days before the date fixed for the meeting, and <i>sent by post with acknowledgement of receipt</i> to every shareholder whose name appears in the register of shareholders not later than seven days <i>or, in case the notice is for a special resolution to be made by the general meeting, fourteen days before the date fixed for the meeting.</i></p> <p>The notice of the summoning of a general meeting shall specify the place, the day and the hour of meeting and the nature of the business to be transacted. <i>In case the notice is for a special</i></p>	<p>Notice to attend a general meeting has to be published <i>at least once</i> (instead of <i>twice</i>) in a local newspaper <b>and</b> sent by <i>post with acknowledgement of receipt</i> (instead of a choice to publish in a local paper <b>or</b> send by regular post) to every shareholder whose name appears in the register of shareholders no later than seven days before the date of such meeting.</p> <p>In the case of a general meeting for a special resolution, the publication in newspaper and sending by post with acknowledgement of receipt for the notice must be made <i>not less than 14 days before the meeting date</i> (instead of <i>seven days</i>, which</p>

	<p><i>resolution to be made in the general meeting, the substance of the proposed resolution shall also be included in the notice.</i></p>	<p>is currently no different from the case of general meetings to approve an ordinary resolution), and in addition to the place, date, time, and agenda, <i>the new legislation also requires that the substance of the proposed resolution shall also be included in the notice.</i></p>
<p><b>Section 1194.</b> A resolution is deemed to be a special resolution if passed by two successive general meetings in the following way:</p> <p>The substance of the proposed resolution has been included in the notice for summoning the first general meeting.</p> <p>The resolution has been passed in the first meeting by a majority of not less than three-fourths of the votes.</p> <p>The subsequent general meeting has been summoned and has been held not less than fourteen days and not more than six weeks after the former meeting.</p> <p>The full text of the resolution passed in the first meeting has been included in the notice summoning the second meeting.</p> <p>The resolution passed in the former meeting has been confirmed in the subsequent meeting by a majority of not less than two-thirds of the votes.</p>	<p><b>Section 1194.</b> Any resolution to carry out a business required by law to be passed as a special resolution shall be passed by a majority of not less than three-fourths of the votes of the present shareholders who are eligible to vote.</p>	<p>The criteria for passing a special resolution are changed so that one can be passed in a single meeting (instead of two) and by a majority of not less than three-fourths of “the votes of the present shareholders who are eligible to vote” (instead of “the votes”).</p>
<p><b>Section 1204.</b> Notice of any dividend that may have been declared shall be either <i>published</i> twice at least <i>in a local paper</i> or <i>given by letter</i> to each shareholder whose name appears on the register of shareholders.</p>	<p><b>Section 1204.</b> Notice of any dividend that may have been declared shall be <i>given by letter</i> to each shareholder whose name appears on the register of shareholders. <i>If the company has any share represented by a certificate issued to bearer</i>, the notice shall also be published <i>once</i> at least in a local paper.</p>	<p>Under the current law, notice of any dividend declaration may be <i>either published in a local newspaper or given by letter</i> to each shareholder.</p> <p>Under the amended bill, however, the notice must be <i>given by letter</i> to the shareholders and the option to publish in a local newspaper is removed. However, <i>if the company has a bearer share, the notice must both be given by letter and published at least once in a local newspaper.</i></p>
<p><b>Section 1226.</b> When a company proposes to reduce its capital, it must publish <i>seven times</i> at least in a local paper and send to all creditors known to the company a notice of the particulars of the proposed reduction, requiring the creditors to present within <i>three months</i> from the date of such notice any objection they may have to such reduction.</p>	<p><b>Section 1226.</b> When a company proposes to reduce its capital, it must publish <i>once</i> at least in a local paper and send to all creditors known to the company a notice of the particulars of the proposed reduction, requiring the creditors to present within <i>thirty days</i> from the date of such notice any objection they may have to such reduction.</p>	<p>The procedural and time requirements for reduction of capital are reduced:</p> <ol style="list-style-type: none"> <li>1. Publication in newspaper must be made at least once (instead of <i>at least seven times</i>); and</li> <li>2. The timeframe for the creditors to file an objection is shortened</li> </ol>

<p>If no objection is raised within the period of <i>three months</i>, none is deemed to exist.</p> <p>If objection is raised, the company cannot proceed with the reduction of its capital unless it has satisfied the claim or given security for it.</p>	<p>If no objection is raised within the period of <i>thirty days</i>, none is deemed to exist.</p> <p>If an objection is raised, the company cannot proceed with the reduction of its capital unless it has satisfied the claim or given security for it.</p>	<p>to within <i>thirty days</i> (from <i>three months</i>) from the date of notice, and the non-objection period of time in paragraph 2 is correspondingly changed to <i>thirty days</i> (from <i>three months</i>).</p>
<p><b>Section 1237 (4).</b> A limited company may also be dissolved by the Court on the following grounds:</p> <p>...</p> <p>(4) If the number of the shareholders is reduced to less than <i>seven</i>.</p>	<p><b>Section 1237 (4).</b> A limited company may also be dissolved by the Court on the following grounds:</p> <p>...</p> <p>(4) If the number of the shareholders is reduced to less than <i>three</i>.</p>	<p>The minimum number of shareholders in a limited company is reduced from <i>seven</i> to <i>three</i>, in line with Section 1097.</p>
<p><b>Section 1240.</b> The company must publish <i>seven times at least</i> in a local paper and send to all creditors known to the company by registered letter a notice of the particulars of the proposed amalgamation requiring the creditors to present within <i>six months</i> after the date of notice any objection they may have to it.</p>	<p><b>Section 1240.</b> The company must publish <i>once at least</i> in a local paper and send to all creditors known to the company a notice of the particulars of the proposed amalgamation requiring the creditors to present within <i>sixty days</i> after the date of notice any objection they may have to it.</p>	<p>The procedural and time requirements for amalgamation of companies are reduced:</p> <ol style="list-style-type: none"> <li>1. Publication in newspaper must be made <i>at least once</i> (instead of <i>at least seven times</i>); and</li> <li>2. The timeframe for the creditors to file an objection is shortened to within <i>sixty days</i> (from <i>six months</i>) from the date of notice.</li> <li>3. The notice is no longer required to be made by registered letter.</li> </ol>
<p><b>Section 1246.</b></p> <p>(1) Where the Registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.</p> <p>(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published with a view to striking the name of the company off the register.</p>	<p><u>Repealed:</u> Section 1246</p> <p><u>Added:</u> Sections 1273/1, 1273/2, 1273/3 and 1273/4 of the Civil &amp; Commercial Code:</p> <p><b>"Section 1273/1.</b> Where the Registrar has reasonable cause to believe that a registered partnership, a limited partnership or a company is not carrying on business or in operation, he shall send to the partnership or company by post with acknowledgement of receipt a letter inquiring whether the partnership or company is carrying on business or in operation <i>and informing it that if an answer is not received within thirty days from the sending date thereof, a notice will be published in a newspaper with a view to striking the name of the partnership or company off the register.</i></p>	<p>The scope of applicability of the provisions regarding removal from the register of companies that are reasonably believed by the registrar to not be carrying on any business or in operation is expanded to cover registered partnerships, limited partnerships and limited companies (instead of only limited companies as in the current Section 1246). As Section 1246 is in Chapter IV, which is exclusively concerned about limited companies, the Section is repealed and new corresponding provisions are added as Chapter VI so as to allow their applicability to registered and limited partnerships.</p> <p>Certain conditions are also revised to reduce required steps for deregistering a juristic person:</p> <ul style="list-style-type: none"> <li>• Steps that need to be taken by the registrar for inquiring about the operation of the partnership/company and informing it that if no answer is given a notice will be published in the newspaper with a view to striking their name off the register are reduced.</li> </ul>

		<p>The letter has to be sent only once by post with acknowledgement of receipt to the partnership/company, and the timeframe for giving an explanation is 30 days (instead of sending two letters, each requiring a one-month period for explanation).</p>
<p>(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in one of the local newspapers, and send to the company by registered post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.</p> <p>(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in one of the local newspapers and send to the company alike notice as is provided in the fore-going subsection.</p>	<p>If the Registrar either receives an answer from the partnership or company to the effect that it is not carrying on business or in operation, or does not within thirty days after sending the letter receive any answer, he may publish once at least in one of the local newspapers, and send to the partnership or company by post with acknowledgement of receipt, a notice that at the expiration of ninety days from the sending date of that notice the name of the partnership or company mentioned therein will, unless cause is shown to the contrary, be struck off the register.</p> <p><b>Section 1273/2.</b> If, in any case where a partnership or company has been dissolved and is in the process of liquidation, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the partnership or company are fully wound up, and the liquidation returns have not been made by the liquidator or the registration of completion of liquidation process has not been applied for by the liquidator, the Registrar may send a letter by post with acknowledgement of receipt to the partnership or company and to the liquidator at his last known place of business demanding the appointment of an acting liquidator, submission of the returns or registration of the completion of liquidation, as the case may be, and informing them that if the action is not carried out within one hundred and eighty days from the sending date thereof, a notice will be published in a newspaper with a view to striking the name of the partnership or company off the register.</p> <p>If the partnership or company or the liquidator fails to take the action within the period of time prescribed in the foregoing paragraph, the Registrar shall publish once at least in a local newspaper and send by post with acknowledgement of receipt to the partnership or company and the liquidator notice that at the expiration of ninety days from the date of sending of that notice the name of the partnership or company mentioned therein will, unless cause is shown to the contrary, be struck off the register.</p>	<ul style="list-style-type: none"> <li>• The required number of times of publication in a local newspaper is clearly identified as only once (the current law does not clearly address the number of times required to publish in the newspaper). The sending of the notice regarding deregistering the partnership/company after the lapse of 90 days (instead of three months) from the date of sending is specifically required to be made by post with acknowledgement of receipt (the current law does not require that it be sent by post with acknowledgement of receipt).</li> <li>• If the partnership/company has been dissolved and is undergoing the liquidation process, and the registrar reasonably believes that no liquidator is acting, or that the affairs of the partnership/company are fully wound up but the liquidator has failed to make returns or apply to register the completion of the liquidation process, the registrar is required to notify the relevant party to liquidate and register the liquidation within 180 days (instead of six months) from the date of notice. Such notice has to be sent by post with acknowledgement of receipt (the current law does not require it to be sent by this method).</li> </ul>

<p>(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Government Gazette, and on the publication in the Government Gazette of this notice the company shall be dissolved: provided that the liability, if any, of every director, managing officer and shareholders shall continue and may be enforced as if the company had not been dissolved.</p> <p>(6) If a company or any shareholder or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or shareholder or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.</p>	<p><b>Section 1273/3.</b> At the expiration of the time mentioned in the notice under Section 1273/1 or Section 1273/2, the Registrar may, unless cause to the contrary is previously shown by the partnership or company or the liquidator, strike the name of the partnership or company off the register, and on the strike of its name off the register the partnership or company shall lose its status as a juristic person: provided that the liability of every managing partner, partner, director, managing officer and shareholders shall continue and may be enforced as if the partnership or company had not lost its status as a juristic person.</p> <p><b>Section 1273/4.</b> If a partnership, a partner, a company or any shareholder or creditor thereof feels unfairly aggrieved by the partnership or company having been struck off the register, the Court on the application of the partnership, partner, company or shareholder or creditor may, if satisfied that the partnership or company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the partnership or company be restored to the register, order the name of the company to be restored to the register, and thereupon the partnership or company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the partnership or company and all other persons in the same position as nearly as may be as if the name of the partnership or company had not been struck off.</p> <p>Any request for restoration of the name of the partnership or company to the register may not be made after the expiration of ten years from the day the name is struck off by the Registrar."</p>	<ul style="list-style-type: none"> <li>The status of the partnership/company as a legal entity ceases when it is deregistered by the registrar (instead of when the matter is published in the Government Gazette).</li> </ul> <p>The provision about restoration of a partnership/company to the register is principally the same. However, it is now clearly specified that the request for restoration must be filed within 10 years from the date of deregistration under Section 1273/4 paragraph 2.</p>
	<p><u>Added:</u> Sections 1246/1, 1246/2, 1246/3, 1246/4, 1246/5, 1246/6 and 1247/7</p> <p><b>"Section 1246/1.</b> A registered partnership or limited partnership consisting of at least three partners may be converted into a limited company by consent of all partners and performance of the following:</p> <p>(1) Notification of the consent of partners to convert the partnership into a limited company to the Registrar in writing within fourteen days from the date of consent by all partners; and</p>	<p>The criteria and procedures for conversion of a registered or limited partnership into a limited company are added (the current law does not contain these provisions).</p>

(2) Publication at least once in a local paper and sending to all creditors known to the partnership a notice of the particulars of the proposed conversion, requiring the creditors to present within thirty days from the date of such notice, any objection they may have to such conversion.

If an objection is raised, the partnership cannot proceed with the conversion unless it has satisfied the claim or given security for it.

**Section 1246/2.** If no objection is raised or an objection is raised but the claim has been satisfied or security has been given, all partners shall hold a meeting to consent to and proceed with the following:

- (1) Prepare the memorandum of association and the articles of association of the company (if any);
- (2) Fix the amount of share capital of the company, which shall be equivalent to the amount of total contributions of all partners, and fix the number of shares of the company to be vested with each partner;
- (3) Fix the amount already paid in money on each share, which shall be at least twenty-five percent of the stated value of each share;
- (4) Fix the number of ordinary shares or preference shares to be issued and allotted to the partners and the nature and extent of the preferential rights accruing to the preference shares;
- (5) Appoint directors and fix their respective powers;
- (6) Appoint auditors; and
- (7) Carry out other activities as necessary for the conversion.

In proceeding with the actions under the first paragraph, the provisions relating to a limited company regarding such respective actions shall apply *mutatis mutandis*.

**Section 1246/3.** The former managing partners shall deliver the businesses, property, accounts, documents and evidence of the partnership to the board of directors of the company within fourteen days after the consent by partners and the completion of actions under Section 1246/2.

If any partner has not paid in at least twenty-five percent of the price of any share or has not transferred ownership of any property or produced any document or evidence of exercise of rights to the board of directors, the board of directors of the company shall issue a letter demanding that the partner pay in the share price, transfer the ownership, or produce the document or evidence of exercise of rights, as the case may be, for the board of directors within thirty days from the date of receipt of the demand letter.

	<p><b>Section 1246/4.</b> The board of directors of the company shall file with the Registrar an application to register the conversion into a limited company within fourteen days from the date of full compliance with Section 1246/3.</p> <p>In applying for registration of the conversion, the board of directors shall also submit to the Registrar, together with the application for registration, the minutes of partners' meeting on consideration of consenting to and proceeding with the conversion of the partnership into a limited company under Section 1246/2, the memorandum of association, the articles of association, and the list of shareholders.</p> <p><b>Section 1246/5.</b> After the conversion of the registered partnership or limited partnership into a limited company has been accepted for registration by the Registrar, the former registered partnership or limited partnership shall lose its status as a registered partnership or limited partnership under the Civil and Commercial Code and the Registrar shall make a note of such loss on the register.</p> <p><b>Section 1246/6.</b> After the registration for conversion of the registered partnership or limited partnership into a limited company, the company shall be vested with all the property, obligations, rights and responsibilities of the former registered partnership or limited partnership.</p> <p><b>Section 1247/7.</b> If after the registration for conversion into a limited company, the company is unable to perform any obligation as vested from the converted partnership, the creditor of such obligation may enforce the performance of the obligation on the partners of the converted partnership to the extent that each partner is liable for the obligations of the partnership."</p>	
<p><b>Section 1253 (1).</b> Within fourteen days after the date of dissolution or in case of liquidators appointed by the Court, after the date of appointment, the liquidators must:</p> <p>(1) Notify the public by <i>two successive advertisements</i> at least in a local paper that the partnership or company is dissolved and that its creditors must apply for payment to the liquidators . . . .</p>	<p><b>Section 1253 (1).</b> Within fourteen days after the date of dissolution or in case of liquidators appointed by the Court, after the date of appointment, the liquidators must:</p> <p>(1) Notify the public by advertisement <i>once at least</i> in a local paper that the partnership or company is dissolved and that its creditors must apply for payment to the liquidators . . . .</p>	<p>The required publication in a local newspaper of the liquidators' notice to the public regarding the dissolution is reduced from <i>at least twice</i> to <i>at least once</i>.</p>