

Operation of Board of Directors without a Quorum or Chairman

In response to the consultation letter of the Department of Business Development, Ministry of Commerce dated February 19, 2018 with regards to public limited company's issues relating to the event that the chairman position becomes vacant, or the chairman is unable to perform his duty (i) in convening the board of directors' meeting in the case that the remaining directors can constitute the quorum; and (ii) in convening the shareholders meeting in the case that the remaining directors cannot constitute the quorum under Section 81 and 83 of the Public Limited Companies Act B.E 2535 (1992) (as amended) (the "PLC Act"), Office of the Council of State (3rd committee) has issued a memorandum No. 839/2561 on May 11, 2018 clarifying the relevant legal provisions as follows.

In convening a board of directors' meeting, Section 81 of the PLC Act prescribes that the chairman is obliged to convene the meeting. However, in the event that the chairman position becomes vacant, or the chairman is unable to perform his duty, the remaining members of the board of directors, given that a quorum is constituted, may convene a board of directors' meeting to continue carrying out the management and business operation of the company in accordance with the shareholders' resolutions, articles of association and objectives of the company. In the case that any vacancy of directors result in the remaining directors not constituting a quorum, the remaining directors shall only convene the shareholders' meeting to elect new directors to fill in the vacancies pursuant to Section 83 of the PLC Act. However, in the event that the chairman position also becomes vacant, or the chairman is unable to perform his duty, the remaining directors shall be able convene a shareholders' meeting in order to elect the vacancies on the board of directors immediately; such board of directors' meeting shall adhere to the law regarding the board of directors' meeting, keeping in mind the intention of the PLC Act which encourages the continuity of business operation. This conforms with the spirit of the PLC Act such that rules and procedures relating to the duty and authority of board of directors shall be for the benefit of the business of the company and complies with the shareholders' resolutions and articles of association of the company. It was further noted that in order to avoid future issues and ensure operation without interruption going forward, the company may consider amending its articles of association to accommodate the convening of board of directors' meeting in the event that the chairman position becomes vacant, or the chairman is unable to or not willing to perform his duty as mentioned above as well as amending other provisions concerning operations of the board of directors to the extent that does not contradict the true intentions and objectives of the PLC Act. The opinion of the Council of State not only obtains a pragmatic approach to solving the issues of vacancy in positions of the board of directors, but also highlights the view that provisions of the PLC Act cannot be construed solely for the literal meaning of the words, but must be interpreted in conjunction with the true intentions of the law which aims to facilitate the continuity of business operation as well as to protect the benefits of the company. Should you have any questions on the issue concerning the subject matter hereof, please feel free to contact your regular contacts or the contact provided below.

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