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Memo: Company Liquidation in Thailand

November 2023



A. Introduction



The process for closing down a business in Thailand varies significantly based on the form of business registration. Overseas companies registered as a representative office, regional office, or branch office in Thailand can be deregistered with the Department of Business Development once tax clearance has been obtained. Other enterprises, such as a registered partnership, limited partnership, or private limited company, must undergo a formal liquidation process.

Under the Thai Civil and Commercial Code, there are several grounds on which a company can be dissolved. These include insolvency or court-ordered dissolution in situations where it is expected that the company can only be carried on at a loss and with no prospect of recovering. In addition, shareholders may decide to wind up the company by special resolution.

The process of liquidation and dissolution of a company in Thailand usually takes six to 12 months. The exact duration depends on various factors, including whether the company's accounts for the previous year have been audited, the resolution of any pending legal proceedings or tax matters, the company's registered capital and the overall disposition of assets, among other relevant considerations. Please note that, during the liquidation period, the company must continue to comply with its statutory obligations under all applicable laws, rules and regulations.

Please find further information on the reasons, relevant steps, the role of the liquidators and employment law related considerations relating to the liquidation and dissolution of a private limited company in Thailand.

B. Dissolution of a company in Thailand

I. Reasons for dissolution

Pursuant to sec. 1236 of the Thai Civil and Commercial Code (“CCC”), a company shall be dissolved:

- in the case, if any, provided for in its regulations;
- if formed for a period of time, at the expiration of such period;
- if formed for a single undertaking, at the termination of such undertaking;
- by a special resolution to dissolve; and
- by the company becoming bankrupt.

In addition, as stipulated in sec. 1237 CCC, a company may also be dissolved by the court for the following reasons:

- failure to file the statutory report or to hold the statutory meeting;
- if the company fails to commence business within one year from the date of registration or suspends its business for a whole year;
- if the business of the company can only be carried on at a loss and there is no prospect of its fortunes being restored;
- If the number of shareholders is reduced to less than two.

II. Dissolution and liquidation by special resolution

The procedures for dissolution and liquidation of a Thai company are set out in sec. 1247 - 1273 CCC and can be outlined in the following eight steps.

1. Preparation and holding of a shareholders’ meeting

First, the board of directors (“BoD”) must hold a meeting to discuss the need for a shareholders’ meeting with the purpose of passing a special resolution to dissolve the company, appointing the liquidator, specifying the scope of the liquidator’s powers and determining the address of the liquidator’s office if it is not the company’s registered office.

Following the BoD meeting, a shareholders’ meeting should be called to discuss and approve the above matters. Notice of the meeting must be sent by post with acknowledgement of the receipt to each shareholder whose name appears in the register of shareholders at least 14 days before the date of the

meeting¹, unless the company’s Articles of Association (“AoA”) requires a longer period of notice or additional notifying procedures. The notice must clearly state the purpose of the meeting, which is the “dissolution of the company”.

At the shareholders’ meeting, the shareholders must approve the above agenda items by passing a special resolution supported by at least 3/4 of the voting shareholders present at the meeting². To constitute a quorum, a least 1/4 of the total shares must be present, unless otherwise specified in the AoA.

By default, all directors of a company act as liquidators unless the AoA provides otherwise³. If the company’s affidavit permits all directors to act as liquidators, no further appointments are required. However, if a company has several directors and the company wishes to appoint only one or a selected group of directors to act as liquidators, this special power must be approved at the shareholders’ meeting.

2. Registration of dissolution and public notice

The liquidator(s) are required to give public notice of the dissolution of the company by two successive advertisements in a local newspaper and by sending registered letters to each creditor listed in the company’s books or other documents within 14 days of the date of passing the special resolution⁴. At the same time, within the same 14-day period, the liquidators must register the dissolution of the company and their names (“**dissolution date**”) with the Department of Business Development (“DBD”)⁵.

3. Notifying the Revenue Department and deregistering for VAT

The company (if registered for VAT) must give notice of the dissolution and return the VAT registration certificate to the revenue department within 15 days of the dissolution date⁶.

¹ Sec. 1175 of the Thai Civil and Commercial Code.

² Sec. 1194 of the Thai Civil and Commercial Code.

³ Sec. 1252 of the Thai Civil and Commercial Code.

⁴ Sec. 1253 of the Thai Civil and Commercial Code.

⁵ Sec. 1254 of the Thai Civil and Commercial Code.

⁶ Sec. 85/15 of the Revenue Code.

4. Notifying the Social Security Office

The company must also notify the Social Security Office of the dissolution of the company within 15 days of the month following the dissolution date.

Please note that the process of dissolution of the company included the termination of the company's existing employment contracts. As a result, the company is obliged to deregister its employees from the Social Security Office (please see below for more information on the termination of employment).

5. Corporate income tax return and audited financial statements

The company must prepare a corporate income tax return (P.N.D. 50) and audited financial statements for the period ending on the dissolution date. As soon as the audited financial statements are available, the liquidator(s) must call for shareholders' meeting to discuss and approve the audited financial statements. Notice of this meeting must be given in a local newspaper at least seven days before the meeting unless the company's AoA require a longer notice period.

The corporate income tax return and approved audited financial statements must be filed with the Revenue Department within 150 days of the dissolution date⁷.

Please note that under the revenue code, the revenue department has the power to investigate tax returns for a period of two years. This period can be extended to up to five years where there is evidence or suspicion of tax evasion. The length of the investigation depends on the facts of each case and the company's history with the tax authorities.

6. During liquidation

After settling all the company's debts and recovering amounts owed by the company's creditors, and after distributing all the company's assets and returning any remaining funds to the shareholders pro rata, the liquidator(s) can close the company's bank accounts as no further transactions will take place.

Notwithstanding this, the liquidator(s) must continue to file a monthly VAT return until VAT deregistration is confirmed by the revenue department.

The liquidator(s) must also report to the DBD every three (3) months on the progress of the liquidation process, until VAT deregistration is approved by the revenue department and the entire liquidation process is completed⁸. If the liquidation cannot be completed within one year, the liquidator(s) must call a general meeting at the end of each year to report on the status and progress of the liquidation⁹.

7. Approving the completion of the liquidation

As soon as the liquidation of the company has been completed, the liquidator(s) shall present an account of the liquidation showing how the liquidation has been conducted and how the assets of the company have been disposed of. The liquidator(s) must then call a general meeting to present the account and provide explanations to the shareholders¹⁰.

8. Register completion with the DBD

Once the accounts have been approved by the shareholders, the liquidator(s) must register the proceedings of the meeting with the DBD within 14 days of the date of the meeting. The registration date is considered to be the end of the liquidation process and officially signifies the dissolution of the company.

9. Claims against directors

Pursuant to sec. 1169 CCC, claims against the directors of the company for damages caused by them to the company may be brought by the company or by the shareholders. This right extends to the company's creditors if their claims against the company remain unsettled.

10. Filing claims post-liquidation

Pursuant to Section 1272 CCC, any claims related to the payment of debts against the company, shareholders, or liquidators, can be filed within two years following the completion of liquidation. As a result, completing the liquidation process does not completely release the company from its debts, as creditors still have the opportunity to sue within two years after the company's legal existence has ended (after the date that the completion of the liquidation process is registered with the DBD).

⁷ Sec. 69 of the Revenue Code.

⁸ Sec. 1267 of the Thai Civil and Commercial Code.

⁹ Sec. 1268 of the Thai Civil and Commercial Code.

¹⁰ Sec. 1270 of the Thai Civil and Commercial Code.

III. Duties of the liquidator(s)

The liquidator(s) shall perform the following duties as they arise in a particular case:

- to settle the affairs of the company, pay its debts and sell all its assets¹¹;
- to give notice to the public by at least one advertisement in a local newspaper that the company is being dissolved and that its creditors must apply to the liquidator(s) for payment and to send a similar notice by registered post to each creditor whose name appears on the books or documents of the company within 14 days of the dissolution date or after the date of appointment¹²;
- to deposit the amount due to any creditor in accordance with the provisions of the CCC relating to the deposit in lieu of performance if they do not apply for payment¹³;
- to apply to the court for the company to be declared bankrupt if they find that, after all contributions or shares have been paid, the assets are still insufficient to meet the liabilities¹⁴;
- to draw up a balance sheet as soon as possible, to have it examined and certified by an auditor and to convene a general meeting¹⁵;
- to convene the general meeting to approve the balance sheet and/or to approve the report of the liquidation¹⁶;
- to file a report every three months on the progress of the liquidation and to deposit this report, showing the state of the accounts of the liquidation, with the DBD. This report shall be open to inspection by the shareholders or creditors free of charge¹⁷;
- to convene a shareholders' meeting at the end of each year from the commencement of the liquidation and, if the liquidation lasts more than one year, to submit to this meeting a report of its activities and a detailed account of the situation¹⁸;
- to pay all costs, charges and expenses properly incurred in the liquidation in preference to other debts¹⁹. The assets of the company may be divided among the shareholders if they are not required to meet all liabilities of the company²⁰.
- as soon as the affairs of the company have been fully liquidated, to draw up an account of the liquidation showing how the liquidation has been conducted and how the

property of the company has been disposed of. The liquidator must convene a general meeting for the purpose of presenting the account and giving an explanation²¹.

IV. Termination of employment

1. Termination by notice

When a company goes into liquidation, the process for terminating employment contracts must be carefully considered.

In general, the termination of employees in Thailand should be treated as a sensitive matter.

Risks to consider include:

- individual labour disputes (even if unfounded) as a result of the termination;
- reputational risk (particularly from disparaging social media posts); and
- disclosure of confidential information by the employee.

The Labour Protection Act B.E. 2541 (A.D. 1998) and, to some extent, the CCC provide details on the termination of employees by the employer. In the case of open-ended employment contracts, the employer is required to give advance notice of the termination to the employees in accordance with the contractual or statutory notice periods. Alternatively, the employer may choose to terminate the contract immediately by paying the employee wages equivalent to the notice period up to the due date of termination²²; i.e., by providing the employee with a payment in lieu of notice.

If the employment contract is for a fixed term, the employment automatically ends at the end of the fixed term. However, if the employer intends to terminate the contract prematurely, the employer must give notice at or before any due date of wage payment in order to take effect on the following due date of wage payment. In addition, such termination before the agreed end date may constitute a breach of contract. If the employee suffers any damages, the employee may be entitled to claim additional damages from the company under civil law.

¹¹ Sec. 1250 of the Thai Civil and Commercial Code.

¹² Sec. 1253 of the Thai Civil and Commercial Code.

¹³ Sec. 1264 of the Thai Civil and Commercial Code.

¹⁴ Sec. 1266 of the Thai Civil and Commercial Code.

¹⁵ Sec. 1255 of the Thai Civil and Commercial Code.

¹⁶ Sec. 1256 of the Thai Civil and Commercial Code.

¹⁷ Sec. 1267 of the Thai Civil and Commercial Code.

¹⁸ Sec. 1268 of the Thai Civil and Commercial Code.

¹⁹ Sec. 1263 of the Thai Civil and Commercial Code.

²⁰ Sec. 1269 of the Thai Civil and Commercial Code.

²¹ Sec. 1270 of the Thai Civil and Commercial Code.

²² Sec. 17 (3) of the Labour Protection Act B.E. 2541 (1998); Sec. 582 of the Thai Civil and Commercial Code.

2. Settlement agreement

One option to consider as an alternative to termination by notice is to terminate the employment by mutual agreement between the employer and employee, i.e., to enter into a settlement agreement with the employee if possible. This is particularly relevant if there is a risk that employees may start a labour dispute or make social media posts (containing confidential information or of a defamatory nature) that may harm the employer's reputation and interests.

In such an agreement, both parties will set out the terms and conditions of the termination of the employee's employment with the employer, with the aim of amicably and fully settling and disposing of any claims of whatever kind or nature that the employee may have or claim to have against the employer arising out of or in connection with the employee's employment or the termination thereof.

In addition, such an agreement will allow for binding post-contractual obligations, address tax obligations, and (to some extent) preclude labour disputes. It would also provide for a severance pay, including all relevant payments such as compensation for untaken leave, severance pay and payment in lieu of notice, subject to the employee meeting certain conditions (e.g., not disclosing confidential information or posting any negative or disparaging comments on social media about the employer).

A further advantage of such an approach may be that both parties can "save face" by agreeing to end the employment relationship in a mutual way.

3. Statutory payments to employee

On termination of employment (whether permanent or fixed-term contracts), the employer is obliged to pay compensation for unused leave (if any), payment of other additional contractual benefits such as special allowances/retirement payments, contractual bonuses and other allowances to which the employee is entitled under the employment contract, and severance pay based on the length of the employees' employment, in accordance with section 118 of the LPA.

Term of employment	Severance pay
120 days – one year	30 days of latest salary
One year – three years	90 days of latest salary
Three years – six years	180 days of latest salary
Six years – 10 years	240 days of latest salary
10 years – 20 years	300 days of latest salary
> 20 years	400 days of latest salary

For the purpose of calculating the period of employment of an employee under the Labour Protection Act, the period of employment of the employee shall also include holidays, days of leave, days of leave granted by the employer in favour of the employee and days of leave ordered by the employer in favour of the employee²³.

²³ Sec. 19 of the Labour Protection Act B.E. 2541 (1998).

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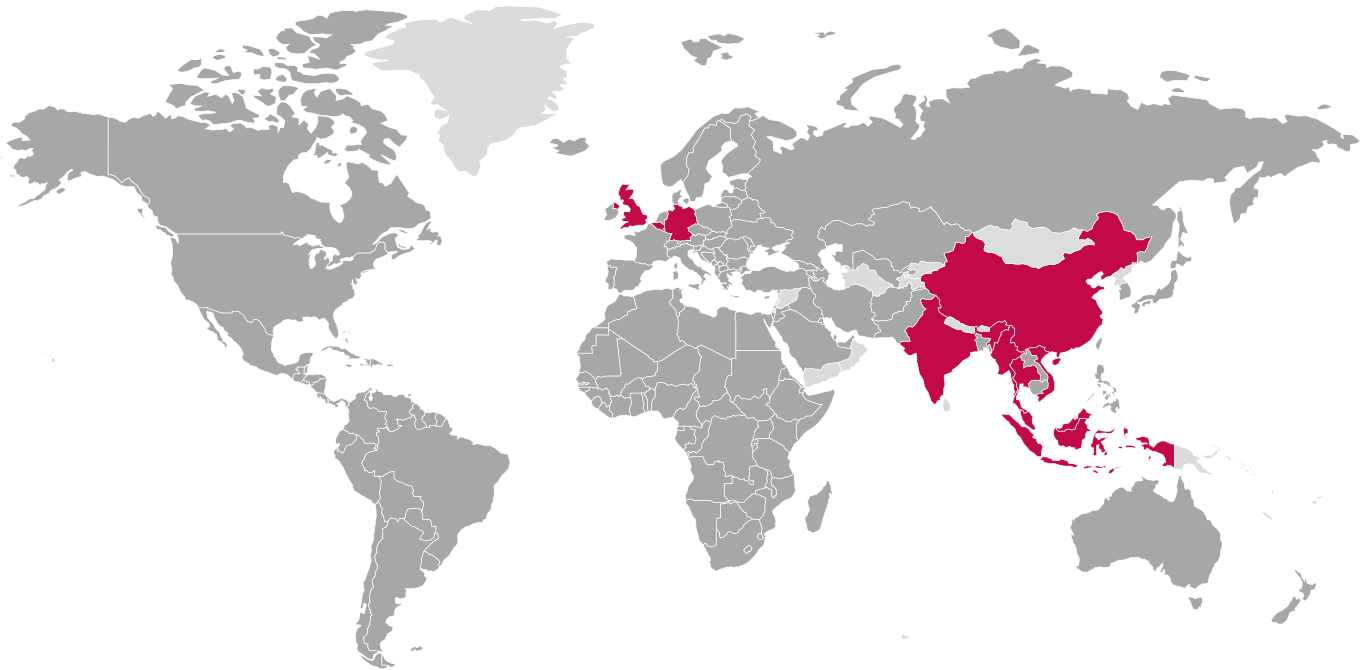
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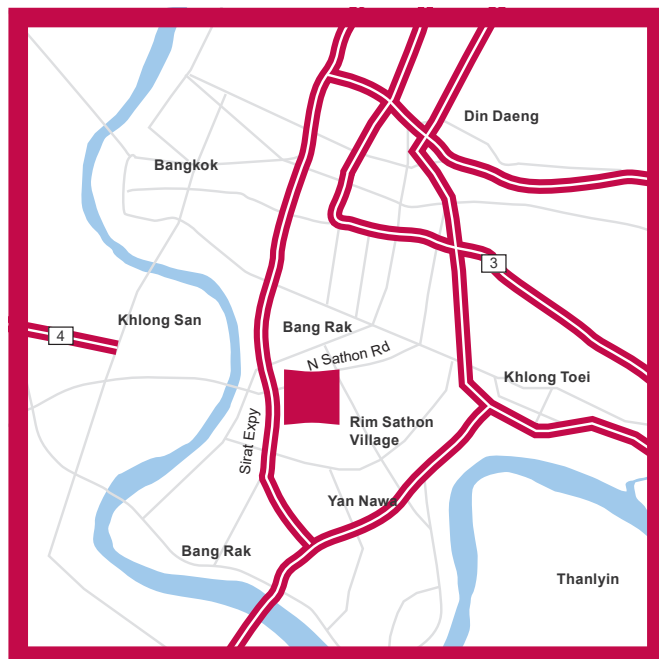


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