

Translation

**Notification of the Department of Business Development
Re: Registration of Limited Company Articles of Association
Pursuant to the Civil and Commercial Code**

Reference is made to the registration of a limited company's articles of association with the Department of Business Development which provides that a director is able to grant a proxy to another person to attend a meeting on his/her behalf and that the proxy holder shall be included in the quorum as well as cast a vote in the meeting of the company board of directors, and a limited company's articles of association which provides that a resolution of the board of directors may be adopted by circular resolution without having to convene a meeting of the company board of directors.

Subsequently, the Supreme Court in Judgment No. 3362/2532 held, in brief, that a director of a limited company must have individually specific qualifications and act in person. A director could not entrust another person to act on his/her behalf in the capacity of a director. In addition, there was a ruling of the Council of State (Concluded Matter No. 75/2536) which held similarly in a case pertaining to the articles of association of a public limited company. The said ruling of the Council of State also held that an article which provided that a board of directors resolution could be adopted by circular resolution without the need to convene a meeting could not be registered due to the resulting circumvention of legal rules.

As a consequence, a number of inquiries have been submitted by stakeholders questioning whether or not a limited company's article which provides that a director could grant a proxy to another person to attend a meeting on his/her behalf and be included in the quorum as well as to cast a vote in a meeting of the company board of directors, and a limited company article which provides that a board of directors resolution could be adopted by circular resolution without having to convene a meeting of the company board of directors could still be registered. Furthermore, there were also questions on whether or not a limited company that had already registered such an article could continue to enforce the articles.

The Department of Business Development submitted such questions to the Department of Business Development Legal Advisory Committee. The Committee gave the following opinion:

1. A limited company may not prescribe in its articles of association for a director to grant a proxy to another person to attend a meeting or be included in the quorum, and also to cast a vote in a meeting of the company board of directors.

Even though the Civil and Commercial Code is a private law premised on the fundamental principle of adherence to the parties' expression of intent, such expression of intent should remain within the legal framework. Thus, despite section 1158 of the Civil and Commercial Code providing that a limited company is able to provide articles which differ from section 1159 to section 1164, a company must still provide articles within such legal framework. In other words, a company may not prescribe articles with an intent that is contrary to the law or contrary to public order or good morals of the people. Such an article will lead to a circumvention of the legal provisions on powers, duties and responsibilities of a director. The same can be said of director's qualifications. Upon an examination of the provisions of law pertaining to the civil and criminal liability of directors, as well as the constitution of a quorum of directors' meeting, it is deemed that these provisions apply specifically to individuals. Therefore, a company may not prescribe the aforesaid articles.

2. A limited company may not prescribe company articles which allow the adoption of a board of directors resolution by circular resolution without convening a meeting of the company board of directors.

The provisions in section 1160, section 1161, section 1162 and section 1163 of the Civil and Commercial Code stipulate rules of procedure for a meeting of the board of directors so as to enable each director to attend the meeting to engage in mutual exchanges of opinions in relation to the Company's businesses before casting a vote on a particular matter. Although section 1158 provided that a company may prescribe otherwise in articles pertaining to the powers of the director, this does not mean that an article may be prescribed to exempt the requirement of a meeting of directors. Such an article constitutes a circumvention of the provisions of law in section 1160, section 1161, section 1162 and section 1163.

3. In the case where a limited company has already registered articles with the aforementioned provisions in clause 1 and clause 2, even though the articles have not yet been deregistered, the company may not continue to apply such articles.

The Department of Business Development hereby gives this Notification for general notice and requests the cooperation of limited companies that have registered articles having the provisions in clause 1 and clause 2 to take actions to amend their articles of association.

Given on the 10th September B.E. 2551 (2008)

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Director-General of the Department of Business Development