

## Registering the Change of the Company's Director Based upon Incorrect Facts<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 921/2561, dated 12<sup>th</sup> September B.E. 2561 (2018)

*Mr. T (P)*

v.

*The Registrar of the Office of the Company and Partnership Registration of Bangkok (D1)*  
*The Director of Business Registration Division (D2)*

The Plaintiff signed a request of the registration of the change of an authorized director of P Company without consent because he did not know the detail of the document. The Defendant No.1 failed to remove his name from the registration of P Company as the Plaintiff requested. The Plaintiff then appealed against the decision of the Defendant No.1 to the Defendant No.2 but he affirmed the decision; thus, he filed a case with the Administrative Court of First Instance. The Supreme Administrative Court held that there was no clear and sufficient evidence showing that an extraordinary general meeting was held. Although the signature of the Plaintiff written on the request was legally binding, the meeting was not held; so it was impossible that a resolution to change an authorized director of P Company was approved. The fact which was a requirement of the legality of the registration did not occur so the registration of the change of an authorized director was invalid. The Supreme Administrative Court affirmed the judgment of the Administrative Court of First Instance to revoke the orders of the Defendant No.1 and Defendant No.2 and cancel the registration of changing the company's director.

**Legal Principles:** *Administrative Act, Issuance of Order*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (1)*

*Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000): Clause 65*

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**Legal Provisions:**

*Civil and Commercial Code: Sections 1151 and 1178*

*Civil Procedure Code: Section 97*

**Judgment (Summary)**

The Plaintiff was an employee at S hotel. The owner of the hotel asked the Plaintiff to provide him the copy of an identification card and a household registration certified true with an original signature, and the Personnel Department of the hotel requested the Plaintiff to sign a piece of document. The Plaintiff did not notice that there was “New Director” written on the document or know the detail of the document, but he decided to give his signature on the paper because he did not want to refuse his employer’s request. Later, the Plaintiff found that the document was a request of the registration of changing an authorized director of P Company. Without consent, the Plaintiff became an authorized director of P Company. He was not involved in the establishment of the company, attended any general meetings or conducted any business activities of the company. Therefore, he demanded that the Defendant No.1 removed his name registered as an authorized director and a shareholder of P Company from the registration of the company. The Defendant No.1 notified the Plaintiff that he would not cancel the registration of changing the company’s authorized director since there was no clear and sufficient evidence proving whether an extraordinary general meeting which approved the change of an authorized director was held and a registrar registered the change of an authorized company’s director complying with the law and regulations. The Plaintiff appealed against the order of the Defendant No.1 to the Defendant No.2 but he affirmed the decision of the Defendant No.1. Therefore, the Plaintiff filed a case with the Administrative Court of First Instance seeking the revocation of the orders of the Defendant No.1 and the Defendant No.2, including the cancellation of the registration of changing an authorized director of P Company.

The Supreme Administrative Court held that there was no clear and sufficient evidence showing that an extraordinary general meeting was held, according to the report of the Committee on Considering an Appeal, Opposition, Complaint and Legal Issue Relating to Business Registration. Moreover, Mr. A holding his shares at 99.99 percent of total shares of P Company stated that he was not informed of the meeting appointment or know whether the meeting was held. It indicated that Mr. A who was a majority shareholder did not attend the extraordinary general meeting and it would assume that the meeting was not taken place so the resolution to change an authorized director would had not been approved, pursuant to Section 1151 reading with Section 1178 of the Civil and Commercial Code. A fact whether an extraordinary meeting was held was a requirement of the legality of

an administrative order as specified in the law on partnership and company under the Civil and Commercial Code. An official shall issue an order when one or many facts or circumstances as required by the law occur and the order issued would be lawful and appropriate to circumstances merely if the official obtains correct and thorough facts. Moreover, the order issued by the official shall be lawful and valid when the power to issue the order arises from facts happened prior to the issuance of the order. Although the signature of the Plaintiff written on the request of the registration of the change of an authorized director was legally binding, the extraordinary general meeting was not held; thus, it was impossible that a resolution to change an authorized director of P Company was approved. The fact which was a requirement of the legality of the registration did not happen so the registration of the change of an authorized director was invalid.

The Defendants argued that the Administrative Court of First Instance obtained facts from the statement of a person involved to adduce a claim instead of a document. The facts were not admissible because the admissibility of evidence was inconsistent with Section 94 of the Civil Procedure Code, and it would have an impact on economic activities of the private sector, international business activities, and Thailand's image. The Court concluded that the argument was not permissible since the Court had discretion to hear evidence inquired from both parties – a plaint, an answer to a plaint, an objection to an answer and a supplementary answer – and the parties were afforded an opportunity to affirm or rebut such evidence, under Clause 65 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure, B.E. 2543 (2000).

Pursuant to Section 9 paragraph one (1) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), the Defendant No.1 unlawfully registered the change of the company's director but he did not cancel the registration. He wrongfully exercised his discretion to issue the order. The decision of the Defendant No.2 affirming the order of the Defendant No.1 was also unlawful. Accordingly, the Supreme Administrative Court affirmed the judgment of the Administrative Court of First Instance to revoke the orders of the Defendant No1 and Defendant No.2 and cancel the registration of changing the company's director.