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# VIRTUAL MOVES

With traditional ways of working turned upside down by the global coronavirus pandemic, and meetings largely being moved online, Thailand's government has issued an emergency decree outlining electronic meeting regulations. While the response so far has been positive, there are a few areas where businesses are awaiting further clarity. **BY ELIZABETH BEATTIE**

Businesses across the board have been hit in a variety of ways since the COVID-19 pandemic began its rapid spread earlier this year. Some operations have folded, or haemorrhaged staff, while others have shuttered physical locations and moved exclusively online. Even for operations that have been able to make the move online seamlessly, there is still a broad range of complications to grapple with. A move to extend online operations can trigger compliance complexities, or create demand for new company policies as communication shifts increasingly online and leaves behind an enduring digital footprint.

In the wake of the global pandemic, government and regulatory bodies across Asia have had to be flexible in order to create some semblance of

consistency. In Thailand, the government recently adjusted regulations around electronic meetings for state and private organisations in response to pandemic-related disruptions.

The motivation for the latest regulatory developments is to help ensure businesses do not face undue disruptions and are able to hold essential meetings legally while maintaining the social distancing restrictions that have kept many out of the office.

The latest changes came after a number of companies reportedly resorted to postponing obligatory annual shareholding meetings and directors' meetings, without proposing alternative dates, while other companies were forced to postpone important meetings.

Given the bind this has placed business in, the emergency decree has been broadly welcomed. Nuanporn Wechsuwanarux, partner at Chandler MHM, tells *Asian Legal Business* that the regulation outlines procedures around joining meetings, while providing guidance around the recording of these, and how participants should behave during the online meeting.

"The key elements of the regulations are: (A) electronic meetings must comply with the security policy and standards as prescribed by the regulation issued by the Ministry of Digital Economy and Society; (B) the standard requirements for arranging all e-meetings include: (1) all the attendees must identify themselves before joining the meeting; (2) all attendees must be able to cast votes, whether it be an open or secret vote; (3) there must be record of the audio, or audiovisual record of all attendees throughout the meeting in the form of electronic data, except if the meeting is confidential; (4) records of computer traffic data in respect to the meetings must be maintained; and (5) the minutes must be maintained in writing," Nuanporn says of the new rules.

The guidelines around how participants should engage in meetings, will provide a number of answers to previously grey areas, while also enabling meetings to go ahead.

"During COVID-19, which resulted in restrictions such as social distancing and border closures, these changes have made it possible to arrange board of directors and shareholders' meetings while ensuring physical distancing and for non-resident directors to attend board meetings," says Nuanporn.

## UNLIKELY TO DISAPPEAR

Of course, one unavoidable question applicable to law changes rolled out during the pandemic is how will these sit within the new, post-pandemic business climate? The other unavoidable question perhaps, is what will "business as usual" look like in a post-pandemic world. Are digital meetings likely to continue to play a significant role or will business leaders look to revert to physical meetings and traditional, pre-COVID expectations?

## E-Meetings – The New Normal

The Covid-19 situation has accelerated digital transformation across the globe. Many organizations in Thailand, started to use e-meetings as an alternative to physical meetings during the early stages of the spread of Covid-19 in order to reduce face-to-face contact. The use of e-meetings was further accelerated by city lockdowns, travel bans and implementation of work from home procedures.

The law has allowed board of directors and shareholders' meetings to be conducted by electronic means since 2014. However, previously various requirements had to be met to hold electronic board of directors and shareholders' meetings by electronic means. Some of these requirements defeated the purpose of holding e-meetings. The key requirements that were thought to make e-meetings impractical were: (i) the requirement that one-third of the quorum must physically attend the meeting at the same venue and (ii) all attendees must attend the e-meetings from within Thailand.

Thai companies must hold annual shareholders' meetings (AGM) to approve the audited financial statements within 4 months from the end of the fiscal year. A board meeting must be convened to call for an AGM. Since most Thai companies adopt 1 January - 31 December as their fiscal years, therefore, April is usually the busiest month



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during the "AGM season". Coincidentally, this year the number of persons infected by Covid-19 Thailand reached its peak at the end of March. A lockdown, which was to reduce Covid-19

infections was ordered before the beginning of the busiest month of the AGM season.

In response to the Covid-19 situation, the Ministry of Commerce and Stock Exchange of Thailand issued interim measures to allow AGMs to be delayed. Furthermore, in order to make e-meetings more practical, on 19 April 2020, the Emergency Decree re Teleconference through Electronic Media, B.E. 2563 (2020) was enacted to remove the requirements that one-third of the quorum must physically attend the meeting at the same venue and that all attendees must attend the e-meetings in Thailand. As a result, companies have started adopting board and shareholders meetings in the form of e-meetings.

Currently, the Electronic Transactions Development Agency is accepting applications for certification of conformity with standards for maintenance of security for electronic meetings under the applicable notification issued by the Ministry of Digital Economy and Society. If the system used for e-meetings is certified by this agency, it is deemed to be compliant with the standard set forth in the relevant notification.

Even though it would take some time for e-meetings to be established as routine practice, it is fair to say that e-meetings have already become part of 'new normal'.

Nuanporn says it's too early to tell how exactly companies will use e-meetings after COVID-19, but these are unlikely to disappear overnight.

"However, we are of the view that e-meetings would be used by joint venture companies between Thai and foreign investors and by subsidiaries of MNCs in Thailand in the long run," she says of the likely developments ahead.

In the meantime, the local reaction to the law change so far has been something akin to a sigh of relief.

"This long-awaited change has been warmly welcomed by the private sector," says Nuanporn, noting that the reaction throughout the business community in Thailand has been "very positive overall".

### FURTHER DEVELOPMENTS

But while there's ample support for the changes, there are a few areas around the more technical and technological elements that remain uncertain.

"Since the relevant government authority has not endorsed any e-meeting software as being compliant with the technical requirements, concerns remain about compliance with the security policy and standards," Nuanporn says.

At present, the most common concern, she adds, "is whether the software that a company uses complies with the technical requirements".

While one set of regulatory changes, may sometimes hint at further development to come, there are still details which businesses are waiting to be unpacked, before thinking ahead.

While Thailand already has a full suite of laws in relations to e-meetings, there are likely to be further peripheral announcements that will add to the clarity of the latest legal changes.

"We would like to see a list of programs/software that the Electronic Transactions Development Agency (ETDA) endorses as being e-meeting software which meets the technical

requirements," says Nuanporn of further developments that would be helpful for business, noting: "This would clear up uncertainty in relation to the practice of holding e-meetings."

Following the clarity around digital meetings, there are likely to be further regulatory developments on the horizon that will also support digital working, Nuanporn says.

"The ETDA has been very proactive in enacting laws which relate to the digital economy. We expect that there will be many other laws, regulations and guidelines which are enacted and updated to facilitate the digital economy," Nuanporn adds.

Taking a more general stance, business will expect further clarity before they can confidently blaze ahead with the latest legal developments, but the outlook ahead is a positive one, says Nuanporn.

"We anticipate that Thai law will soon catch up with the fast-evolving digital landscape," she adds. 