

Newsletter

COVID-19: REVISED, MORE PRACTICAL REQUIREMENTS FOR E-MEETINGS FOR BOARD OF DIRECTORS AND SHAREHOLDERS' MEETINGS

E-meetings

Since the introduction of the Announcement of the National Council for Peace and Order No. 74/2557 re: Teleconference through Electronic Media ("Announcement") in 2014, electronic meetings have not been a practical and popular means to conduct board of directors and shareholders'¹ meetings. This is due to various requirements including all attendees being present in Thailand. Due to Covid-19, this Announcement was cancelled by an Emergency Decree issued on 19 April 2020, which made it possible for attendees to attend board of directors and shareholders' meetings from overseas. In addition, the requirement that one-third of the quorum must physically attend a meeting at the same venue, was removed.

Background

On 19 April 2020, the Emergency Decree re Teleconference through Electronic Media, B.E. 2563 (2020) ("Emergency Decree") was published in the Royal Gazette and became effective on the same day.

The main reason behind the enactment of this Emergency Decree is to remove the requirement that one-third of the attendees must physically attend the meeting. As a result of this requirement, the attendees would be at risk of Covid-19 infection. In addition, the Announcement also required that all attendees be present in Thailand, which is not practical for both the government and business sector.

Revised key requirements of e-meetings

The key requirements under the Emergency Decree are as follows:

- The meeting can be convened through electronic means, with attendees not being required to be physically in the same place with other attendees in Thailand, however, they must be able to communicate, discuss matters and express opinions via audio, or audio and video throughout the meeting. The invitation letters and documents used for the meeting can be sent via electronic mail.²
- The meeting must be conducted under the conditions set out by the Ministry of Digital Economy and Society, which are to be announced in the Royal Gazette.
 - o Since standards for electronic conference security have not yet been announced by the Ministry of Digital Economy and Society, the Emergency Decree requires that electronic meetings follow security protocols set forth under the Notification from the Ministry of Information and Communication Technology re: Standards for Electronic Conferencing Security B.E. 2557 ("ICT Notification") to the extent that such standards are not contrary to the Emergency Decree. An electronic meeting must be conducted by using a reliable meeting control system and in compliance with technical requirements of the ICT Notification.

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¹ Although it is not entirely clear in this Emergency Decree whether "shareholders" is included in the definition of "Attendees", it is contemplated that this Emergency Decree applies to the shareholders meetings as well.

² Requirements that (1) all attendees must be in Thailand at the time of the meeting and that (2) at least one-third of the quorum must physically attend the meeting at the same venue, have been removed.

Recently, the Electronic Transactions Development Agency (ETDA) published a self-assessment tool to analyze compliance with technical requirements, as submitted by service providers, on their website.

- The following measures shall be provided by the meeting arranger:
 - o all attendees must verify themselves via electronic communications prior to their attendance and must be able to vote at an e-meeting;
 - o the minutes of an e-meeting must be made in writing; and
 - o audio, or audio and video records of all attendees throughout the meeting, including computer traffic data arising from the said recording and security for such records except confidential meetings, must be provided.

Certain meetings may not be convened by electronic means, and certain topics may not be considered at an electronic meeting. These exceptions under the Emergency Decrees will be announced in subsequent Ministerial Regulations.

Effectiveness of electronic meetings conducted in compliance with the Emergency Decree

All the meetings conducted under this Emergency Decree including prior e-meetings already held according to the Announcement are deemed lawful.

This is one of a series of briefings to keep you informed during the Covid-19 situation. If you require any advice in relation to the issues raised, please contact the authors listed in the right-hand column.



This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.