

## Legal Express

# E-meeting Law Eases Corporate Meetings

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The law on electronic meeting (e-meeting) was first introduced in Thailand in 2014 under the National Council Peace and Order No. 74/2557 (2014) Re: Electronic Meetings. However, since then hardly have we seen any company holding an e-meeting for a meeting of its BOD or shareholders primarily because such law required that (i) at least 1/3 of the quorum be physically present at the same meeting venue, and (ii) all attendees be in Thailand. These requirements made it impractical, if not impossible, for a company having a non-Thai resident BOD member(s) or shareholder(s) (e.g. joint venture companies) to benefit from the then e-meeting law. Besides, neither a circular BOD resolution, nor BOD meeting attendance by proxy, is permissible under Thai laws. Hence, corporates in Thailand were not left with much flexibility to hold a meeting of the BOD and shareholders without a physical meeting.

While an e-meeting has become indispensable for business to move forward, the Emergency Decree on Electronic Meeting B.E. 2563 (2020) (the “**Emergency Decree**”) was enacted on 19 April 2020 to repeal and replace the old e-meeting law and enable meeting attendees to legally participate in a meeting via an electronic means from anywhere in the world without at least 1/3 of the quorum having to be physically together, provided that other meeting procedural requirements (e.g. serving of meeting notice, meeting quorum, etc.), and the security and safety standards, as required by the relevant laws are complied with.

This document focuses on a meeting of the BOD and a general meeting of the shareholders of a company only.

## The e-meeting that falls under the Emergency Decree

An e-meeting falling within the ambit of the Emergency Decree is any meeting required to be held by laws and conducted through an electronic means, whereby the meeting attendees are not at the same meeting venue but are able to discuss and express their views via an electronic means. Whilst the definition of the “meeting attendees” under the Emergency Decree specifically includes directors but not shareholders, the spirit of the law which intends to capture an e-meeting of not only the board of directors, but also shareholders of private and public

companies, is well recognized and adopted as a prevailing interpretation of the relevant authorities.

### No amendment to the AOA's required

- A company is not required to amend its articles of association (“AOA's”) to enable it to hold an e-meeting, unless its current AOA's contain any provision prohibiting it to do so.
- If the AOA's incorporate the old e-meeting law by indicating that at least 1/3 of the quorum must be physically present at the same meeting venue, and/or all attendees must be in Thailand, the current interpretation of the relevant authority appears to require the company to still comply with such requirements when holding an e-meeting despite the change in law. To enable a company to hold an e-meeting in accordance with the current e-meeting law, a company will be required to amend its AOA's in the general meeting of the shareholders to remove them.

### Delivery of Meeting Notice

- The Emergency Decree enables a meeting notice and enclosure(s) of an e-meeting to be served via email (e-notice) instead of by registered post.
- However, if a company was to hold a general meeting of the shareholders physically with an add-on electronic channel for those unable to attend in person, it is not crystal clear as to whether an e-notice will suffice or the notice and enclosure(s) would still be required to be served by registered post in accordance with the law and/or its AOA's. In light of this, it is advisable for a company wishing to facilitate shareholders to join a physical meeting via an electronic means to also serve a notice of the meeting by registered post.
- Nonetheless, in case of a general meeting of the shareholders, a meeting notice shall be advertised in a local newspaper as required by laws.

### Principal requirements for e-meeting

Under the Emergency Decree, the person(s) responsible for convening a meeting (i.e. the BOD) is required to put in place the following:

#### Self-verification:

Attendees shall be facilitated to identify themselves before commencement of the meeting.

#### Vote:

All attendees shall be able to cast their votes by a show of hands and by poll.

#### Data storage:

- notice and enclosure(s) shall be kept in electronic or printed form;
- meeting minutes shall be made in writing;
- there shall be audio or audio-visual recording (as the case may be) of all attendees throughout the meeting, except for a secret meeting; and

- electronic traffic data (information in relation to communication of computer system that displays sources of origin, destination, routes, time, dates, volumes and others) of all attendees shall be kept as evidence.

### Compliance with security & safety standards

E-meeting shall be conducted on the system which complies with the security and safety standards prescribed by the Ministry of Digital Economy and Society (“MDES”) under the Notification Re: the Security and Safety Standards for E-meeting B.E. 2563 published in the Royal Gazette on 26 May 2020 (the “Notification”).

#### Mandatory Procedures & IT Security Measures

The Notification sets out the minimum procedures that meeting organizers are required to put in place for every e-meeting (the “Mandatory Procedures”) namely (i) an identity verification of the attendees before the e-meeting, (ii) a sufficient number of broadcasting channels for communication or interactions via audio or audio-visual together with a backup plan in case of signal interference and additional functions when necessary or in case of emergency, (iii) an access to the e-meeting documents for attendees, (iv) general voting and secret voting mechanism, (v) a storage of data and evidence relating to the e-meeting, except for the confidential e-meeting, in an electronic form by secure and reliable means, and (vi) reporting channels of any interference during the e-meeting. Further, the Notification also prescribes the minimum IT security measures (the “IT Security Measures”) which must cover (i) the confidentiality, integrity, availability, and privacy of electronic data, (ii) personal data protection, and (iii) other qualifications including authenticity, accountability, non-repudiation, and reliability of the e-meeting or relating electronic data.

#### Confidential E-meeting

In the event that the e-meeting is convened for confidential matters, special measures to prevent unauthorized access to the meeting and related information in addition to the Mandatory Procedures and IT Security Standards mentioned above are also required, and in such case, no audio or video recording is permitted.

### Others

#### Proxy

In case of a general meeting of the shareholders, shareholders may attend the meeting by proxy, provided that the executed proxy form meets the legal requirements and is submitted to the chairman at or before the meeting.

#### ETDA’s IT Security Measures

The Electronic Transactions Development Agency (ETDA) has already issued its official IT Security Measures (version 1.1) under the Notification, with which the meeting organiser must comply. The details of the IT Security Measures are available on the ETDA’s official website.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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