

## COVID-19: Company Meetings and Filings in the Current Situation (Updated 23 April 2020)

### Introduction

The government has introduced several measures to alleviate the impact of COVID-19 on business operations in Thailand, namely, several notifications to relax requirements and obligations on the part of business operators. These include, among others, the requirements for corporate entities to hold their annual general meeting and submit financial statements and reports to the authorities.

We had earlier issued a Client Update on "[COVID-19: Company Meetings and Filings in the Current Situation](#)" on 9 April 2020. There have since been notable updates and developments in this area with regard to meetings via electronic media. Below is a summary of the updated measures and relevant guidelines as at **23 April 2020**.

### Private Limited Companies

#### (1) DBD Notification

On 4 March 2020, the Ministry of Commerce ("**MOC**"), by the Department of Business Development ("**DBD**"), issued a Notification of the Department of Business Development Re: Measures Addressing the Spread of Coronavirus Disease 2019 or COVID-19 Which may Affect the Convening of Meetings of Juristic Persons B.E. 2563 (2020) ("**DBD Notification**"). Under the DBD Notification, private limited companies which are affected by the COVID-19 situation such that they are unable to hold their meetings within the period specified under the law, are allowed to hold the meetings after such specified period.

As such, private limited companies that are affected by the COVID-19 situation may hold an annual general meeting of shareholders ("**AGM**") after the period specified by the law and, once the AGM is held, submit a letter clarifying the reason for the said delay to the MOC. The form of the clarification letter is available on the DBD's website. These private limited companies must also submit their list of shareholders to the MOC within 14 days from the date of the delayed AGM, and the audited financial statements within one month from the date of the delayed AGM.

The DBD Notification does not contain an exemption from or mention the penalty on the delayed AGM or late mandatory filings. However, the DBD's Q&A on this matter suggests that the registrar of the DBD will consider the issue on a case-by-case basis. As such, it is advisable that, when the situation recovers, private limited companies should arrange their AGM as soon as possible.

It should be noted that, due to the state of emergency, from 1 April 2020, the filings of financial statements and lists of shareholders of a private limited company must be made via DBD e-Filing only pursuant to the Notification of the Department of Business Development Re: Filing of Financial Statements and List of Shareholders via DBD e-Filing B.E. 2563 (2020) ("**e-Filing Notification**").

### **(2) Meetings via Electronic Media (Updated)**

It is also relevant to note that, under the Emergency Decree on Conferences through Electronic Media B.E. 2563 (2020) ("**Emergency Decree**") which was recently enforced on **19 April 2020**, private limited companies are entitled to conduct meetings via electronic media, and all the attendees may now attend the meeting from anywhere in the world. Therefore, as a result of the Emergency Decree, the requirements for a presence of 1/3 of the quorum and physical presence in Thailand are no longer required. This is a significant change from the previous law that was repealed and replaced by the Emergency Decree, under which at least 1/3 of the quorum must attend the meeting at the same place and all the attendees must physically be in Thailand during the time of the meeting.

In brief, under the Emergency Decree, a meeting can be conducted as follows:

- (a) The delivery of the invitation and supporting documents for a meeting may be made via electronic mail. In such a case, the person responsible for conducting the meeting is required to keep a copy of the invitation and supporting documents of the meeting as evidence (note that copies may be kept in the form of electronic data).
- (b) In the meeting via electronic media, the person responsible for conducting the meeting is required to:
  - (i) arrange for the attendees to identify themselves in order to participate in the meeting via electronic media, prior to the meeting;
  - (ii) arrange for the attendees to be able to vote, both by open and secret voting;
  - (iii) prepare a meeting report in writing;
  - (iv) arrange for the recording of audio or both audio and image, as the case may be, of every attendee for the duration of the meeting in the form of electronic data, except in the case of a confidential meeting; and

(v) keep electronic traffic data of every attendee as evidence.

(The data under (iv) and (v) must form part of the minutes of the meeting.

It is still a requirement under the Emergency Decree that the meeting be in accordance with the standards for maintenance of security for electronic meetings prescribed by the Ministry of Digital Economy and Society. Until a new security standard of meetings via electronic media is enacted under this Emergency Decree and becomes effective, the security standard pursuant to the Notification of Ministry of Information and Communication Technology Re: Security Policy and Standards of the Meeting via Electronic Media B.E. 2557 (2014), dated 24 November 2014 continue to apply to the extent they do not conflict or contradict with this Emergency Decree. The following requirements must be satisfied in order for a meeting to be conducted by electronic means:

- The person in charge of arranging the meeting must procure that all the attendees (i) verify their identity before the meeting commences and (ii) are able to cast their vote (either by way of disclosed voting or secret voting), and must prepare minutes of the meeting in writing.
- The invitation to the meeting can be sent via email according to the timeline set out in relevant laws or the articles of association. A copy of the invitation in such case must be properly kept or recorded in electronic format.
- The sound or sound and vision of all the attendees must be recorded and will be deemed to be a part of the minutes of the meeting, except in the case of confidential matters. Computer data transmissions from the meeting must also be recorded.

The system used for controlling the meeting must, for example, provide the linkage between at least two meeting places, and enable the attendees to communicate with each other by sound and/or sight through a wire/wireless technology (e.g. Local Area Network (LAN), Integrated Service Digital Network (ISDN), or Wide Area Network (WAN)).

- All the attendees must have access to information presented in the meeting through their devices for the entire meeting.

It is not required that private limited companies' articles of association must allow, or be revised to allow, a meeting to be held via electronic media. A meeting via electronic media will be considered valid and effective provided that all the requirements in the above notifications are satisfied.

Separately, it is also worth noting that, despite the current situation, circular meetings, written resolutions or paper meetings are still prohibited under the law.

## Public Limited Companies

### (1) DBD Notification

Public limited companies are allowed under the DBD Notification to hold their AGM later than the period required under the law. Once the AGM is held, a letter clarifying the reason for the delay must be submitted to the MOC. Public limited companies must also submit the list of shareholders and the audited financial statements to the MOC within one month from the date of the delayed AGM.

From 1 April 2020, the filing of financial statements, lists of shareholders and the copy of the annual report and AGM minutes of a public limited company must be made via DBD e-Filing only pursuant to the e-Filing Notification.

### (2) Meeting via Electronic Media

According to a Declaration of the DBD of the MOC dated 24 March 2020, meetings of public limited companies can be conducted via electronic media in accordance with the same requirements applicable to the meetings of private limited companies set out above. This is provided that doing so is not prohibited in the public limited company's articles of association.

### (3) CMSB Notification and SEC Notification

In the case of listed companies, further relaxation measures are available under the Notification of the Capital Market Supervisory Board No. ThorJor. 28/2563, dated 27 March 2020 ("**CMSB Notification**"), and the Notification of the Securities and Exchange Commission No. SorJor. 31/2563, dated 27 March 2020 ("**SEC Notification**").

Under the CMSB Notification, if a listed company is not able to hold its AGM to appoint its auditor due to the COVID-19 situation, the listed company, by the Board of Directors, may instead appoint any auditor in the approved list of the Securities and Exchange Commission ("**SEC**"), and submit its financial statements for the first quarter of 2020 as reviewed by such auditor to the SEC. In this regard, the listed company shall propose the shareholders to appoint such auditor in the next shareholders meeting.

With respect to the SEC Notification, a listed company may request for a delayed submission of quarterly financial statements, annual reports, and annual financial statements for the period ending 1 January to 31 May 2020. The request must be sent to the SEC and contain at least the following information:

- Reason and necessity for the request for the delayed submission; in particular, impact of the COVID-19 situation on the listed company's preparation and submission of relevant statements and/or reports.
- Period of the delayed submission; in particular, (i) for the delayed submission of quarterly financial statements, the period must not be later than the deadline for the submission of the next financial statements, or (ii) for the delayed submission of the annual report and annual financial statements, the period must not be later than four months from the end of the fiscal year.
- The company's opinion in relation to the reason and necessity for the request for the delayed submission and the period for such delayed submission, which must be approved by the audit committee of the listed company or the board of directors, as the case may be.
- Other information which may be useful for the shareholders or investors.

#### (4) Guidelines of the SET

The Stock Exchange of Thailand ("**SET**") has issued guidelines on the holding of the AGM of listed companies. Among other matters, the SET suggested that the shareholders may appoint independent directors of the listed companies to be their proxy for the AGM, and that the listed companies may consider sharing the AGM via an electronic channel to facilitate the shareholders who cannot be physically present at the meeting. In such case, the listed company must notify relevant details to the shareholders in the invitation to the meeting, and announce the same in the website of the listed companies or SET link.

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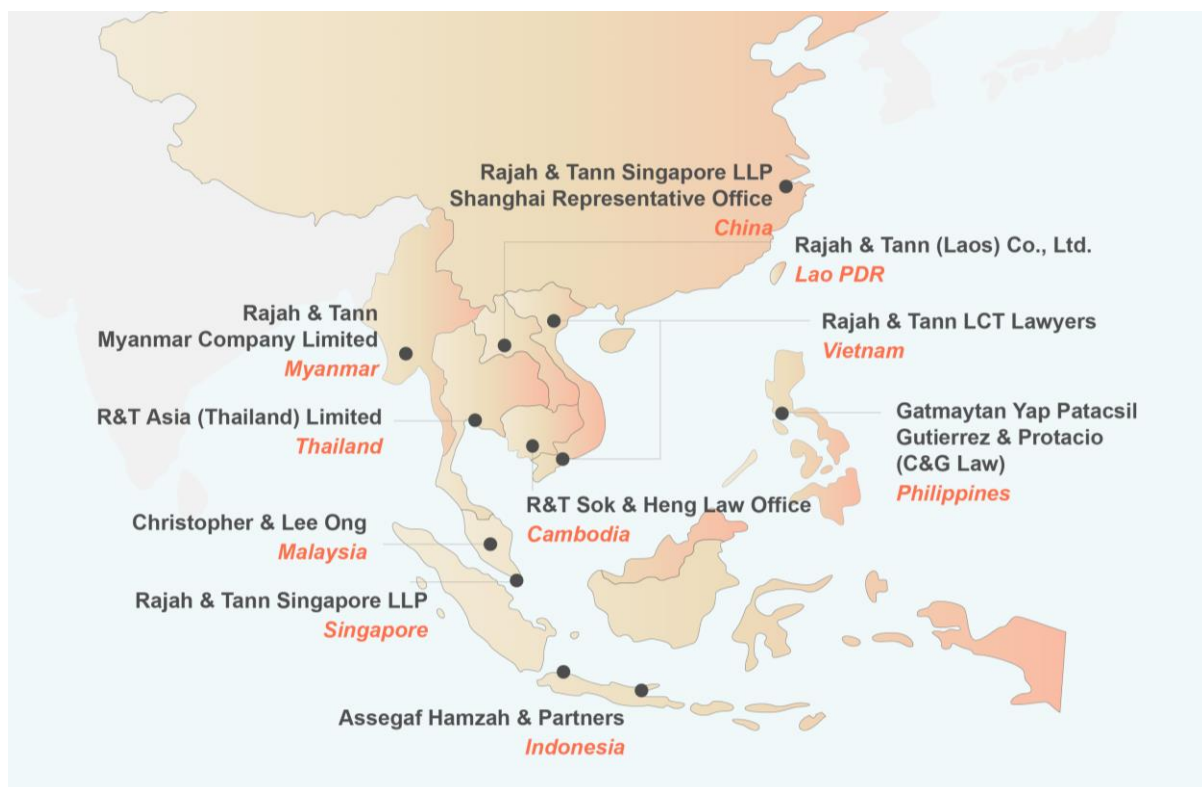
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