

CORPORATE COMPLIANCE DURING THE COVID-19 PANDEMIC IN THAILAND

SAITHIP MANSRI (Partner)
CHOLATHORN POOSUNTHORNTRI (Associate)
PROUDTAT RATTANADILOK NA PHUKET (Associate)

The COVID-19 pandemic and its consequential effects are impacting on the ability of companies to perform all of their corporate compliance obligations under Thai law. In response to these concerns, a number of Thai government agencies have announced measures to temporarily ease certain corporate compliance obligations of both private and public limited companies in Thailand. This article provides a brief summary of the key measures recently introduced by the Thai government to address certain corporate compliance issues during the COVID-19 pandemic.



Ministry of Commerce

1. Annual General Meeting of Shareholders

On 4 March 2020, the Department of Business Development (DBD) issued the *Notification Re: Measure against the Spread of Coronavirus Disease 2019 or COVID 19 which may affect the meetings of juristic persons B.E. 2563 (2020)*. This notification extends the period for holding mandatory meetings beyond that required by law or until the situation of COVID-19 is resolved. As such, any company that is unable to hold the annual general meeting of shareholders (AGM) to approve the financial statements within four months from the end of fiscal year may extend such deadline, provided that after the meeting has been held, the company submits a clarification letter to the DBD registrar outlining the reason for the delay.

2. Submission of the List of Shareholders and Financial Statements

Following the extension of holding of the AGM, the period for submission of the list of shareholders and audited financial statements will also be postponed accordingly, provided that the list of shareholders is submitted to the DBD within 14 days after the AGM date, and the financial statements are submitted to the DBD within one month after the AGM date.

3. **Electronic Conferencing**

On 23 March 2020, the DBD provided clarification on and interpretation of electronic conferencing under the existing *Announcement of the National Council for Peace and Order No. 74/2557 (2014)* to enable any company – regardless of whether such company has a provision in its Articles of Association allowing electronic conferencing – to hold the board and shareholders' meetings through electronic means (including by video or telephone conference) provided that the meetings comply with the relevant requirements of this announcement and Thai law. Under this announcement, the company must use a reliable meeting control system pursuant to the guidelines of the Ministry of Digital Economy and Society. This announcement also requires that such meetings have: (i) at least one third of the quorum to physically attend the meeting at the same conference venue and (ii) all of the meeting attendees to be in Thailand at the time during which the meeting is held. This highlights a significant limitation as this announcement may not ease the burden of companies with shareholders or directors residing abroad. Currently, no further announcement has been introduced to relax such limitation.

Stock Exchange of Thailand

In addition to the above, for listed companies, the Stock Exchange of Thailand (**SET**) has disseminated the following guidelines pertaining to the holding of AGMs during the COVID-19 pandemic.

1. **Proxy**

To minimize close contact with others, attending the AGM by appointing independent directors as proxy of each shareholder is encouraged. This can be done by explicitly specifying in the meeting invitation to be sent to shareholders. In the case where the invitation has already been sent to shareholders, the company may resort to other communication methods such as e-mail or disclosure through the information system of the SET or the company's website.

2. **Online Platform**

To facilitate shareholders who are unable to physically attend the AGM, listed companies may consider: (i) broadcasting the AGM through online platforms such as Facebook Live, Web Ex, Zoom, Webinar, etc.; (ii) accepting questions raised by shareholders prior to or during the AGM via several channels; and (iii) recording responses to such questions in the meeting minutes of the company. In this regard, listed companies should arrange for such available options to be stipulated in the invitation or published on the company's website or SET Link.

3. **Healthcare**

To safeguard the health of individuals who attend AGMs, listed companies should comply with recommendations given by the Department of Disease Control, Ministry of Public Health, concerning the prevention and control of COVID-19 in relation to the summoning of meetings, seminars or other similar activities such as providing fever with respiratory symptom screening system before entry into the meeting room, providing sufficient hand washing or alcohol gel washing area, providing hygienic masks to attendees for wearing throughout the meeting, providing first aid team, and maintaining social distancing, etc. The meeting invitation in this respect should include the recommendations and explanation of certain measures to prevent the spread of COVID-19 and publish the same on the company's website or SET Link.

Securities and Exchange Commission

1. **Submission of First Quarter 2020 Financial Statements**

On 27 March 2020, the Capital Market Supervisory Board (**CMSB**) issued the *Notification No. Thor.Jor. 28/2563 (2020)* with effect on and from 31 March 2020, which provides that listed companies affected by COVID-19 that are delayed in the holding of the AGM and unable to appoint the auditor for the fiscal year 2020, may submit the first quarter 2020 financial statements audited by the qualified auditor as approved by the Securities and Exchange Commission (**SEC**), provided that listed companies must then propose the appointment of such auditor to the next shareholders' meeting to consider and approve.

2. **Relaxation for submission of Financial and Non-Financial Information Report**

On 27 March 2020, the SEC issued the *Notification No. Sor. Jor. 31/2563 (2020)* with effect on and from 31 March 2020. Under this notification, listed companies may request to extend the preparation and submission period of the financial report, quarterly financial statements, annual financial statements and annual report for the fiscal period ending 1 January to 31 May 2020 by: (i) delivering a letter requesting the extension of submission to SEC prior to the due date as prescribed in the *Notification of the CMSB RE: Rules, Conditions and Procedures for Disclosure regarding Financial and Non-Financial Information of Securities Issuers*; and (ii) disclosing information through the SET's information system or system in which investors can access. The letter must contain at least the following information:

- (1) Reason and necessities for requesting the extension demonstrating impact from COVID-19 which prevent the company from preparing and submitting reports to the SEC;
- (2) Specified period for submission in which case is subject to the following periods:
 - For the extension of quarterly financial statement submission, the report must be submitted no later than the deadline for the next financial statement submission;
 - For the extension of annual financial statements and annual report, the report must be submitted no later than four months from the end of the fiscal year; and
- (3) The opinion with regard to the reasons and necessities for the extension and specified period for the extension which has been considered by the Audit Committee or the Board of Directors of the company (as the case may be).

Bangkok Metropolitan Administration

On 27 March 2020, the Bangkok Metropolitan Administration issued the *Notification Re: Order of Temporary Closing of Premises (Issue No. 4)*. Under this notification, various social gathering places in Bangkok including places providing meeting rooms, banquet halls, event venues, and other places of the same nature must be closed temporarily from 28 March 2020 until 30 April 2020. This notification has created difficulty for many companies whose AGMs are usually held at hotels or places providing meeting room services. Currently, we are aware of several listed companies that have postponed their AGM until further notice. However, we are also aware of some companies that have not postponed their AGM as the meeting can be held at their own offices or factory premises.

Going Forward

We expect that Thai government agencies will announce further measures or guidelines for corporate compliance in response to the ongoing COVID-19 pandemic as the situation continues to change. We will monitor any announcements and keep you updated.

If you require any assistance or advice with respect to your company's corporate compliance obligations under Thai law, please contact us at spi-info@siampremier.com

WORKABLE SOLUTIONS, EFFECTIVELY COMMUNICATED

www.siampremier.com

spi-info@siampremier.com



SIAM PREMIER INTERNATIONAL LAW OFFICE LTD.



SIAM PREMIER