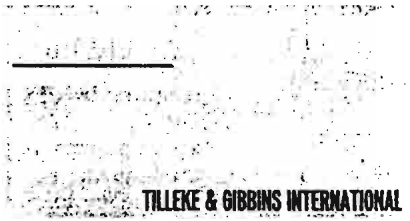
LEGAL AND PRACTICAL ASPECTS OF BOARD AND SHAREHOLDERS' MEETINGS

The amended Company Law that took effect on July 1, 2008 brought quite a revolution in many aspects of corporate practice in Thailand, many of them anticipated. The tougher rules of the Ministry of Commerce that followed further intensified the requirement for more formal and actual board and shareholder meetings. Many corporate directors are now aware of — but possibly confused about — the requirements under the amended law, especially with the compulsory annual general meeting (AGM) of shareholders due by April 30, 2009 for firms with a fiscal year ending on Dec 31, 2008.

Calling and convening a shareholders' meeting under the new amendment has created an extra administrative exercise. Previously, a shareholders' meeting was called by either an advance notice to all shareholders by registered mail or publication twice in a local newspaper. The meeting was then convened at the designated time and place with sufficient shareholders present either in person or by proxy to form the required quorum under the company's articles of association. In practice, many small and wholly owned companies deemed these procedures burdensome and unnecessary and were not too concerned about the 20,000-baht fine (plus 50,000 baht for each director) imposed for failing to properly hold a meeting, because the ministry lacked measures to verify the actual holding of meetings. It was thus not uncommon for a shareholders' meeting not to actually take place or be documented.

The amended law requires that notice of a shareholders' meeting must now be both sent via return-receipt mail and published once in a local newspaper. Rather than simplifying matters, this requirement has instead created a new burden and cost. To verify compliance, Commerce Ministry registrars in most provinces now demand to see a copy of the newspaper announcement before accepting registration. Furthermore, the ministry no longer waives late submission fines when a company fails to register mandatory matters with the ministry within 14 days of the meeting.

The new rules have been successful to some degree, with many companies starting to take notice and publication requirements more seriously this year. Nevertheless, such efforts will be in vain



if the companies fail to hold an actual shareholders' meeting, which is more difficult to organise. To avoid breaching legal duties, every company must comply strictly with all the requirements. At least, there is one welcome change brought by the new rules in that companies now need to hold only one shareholders' meeting instead of two to adopt special resolutions.

There are a few practical limitations and inconveniences. Unlike Bangkok, some provinces only have weekly or fortnightly papers, causing delays in setting the meeting and submission dates. The ministry should reassess the impact of the new rule and require either a notice sent by post or publication in a local newspaper, not both.

There was no legislative change to board meeting rules. Basically, the law is silent on how often a board meeting should be held, giving companies the freedom to set their own rules on timing and procedures. However, a board meeting must be held at least once a year to approve, among other things, a resolution to call for an AGM.

The ministry announced restrictive rules effective from Sept 10, 2008 which prohibited conference calls, circulated resolutions and appointment of a proxy. No doubt, these inflexibilities are not favoured by most companies, especially in this modern age of telecommunications.

Existing companies are not grandfathered (exempted from the law) since the ministry made it clear that its rules shall prevail over all existing articles of association that state otherwise, which are automatically invalidated. Nevertheless, ministry registrars urge companies to amend their existing articles to comply with the rules in order to avoid any confusion.

Many have argued that the ministry announcement is not law and therefore should not bind those companies whose articles have permitted them to do all of the above. However, while the argument sounds challenging, companies cannot get by the registrars when they proceed with the registration, as the registrars have been instructed to comply with the announcement.

If a company wishes to challenge the announcement, it has to obtain a court order to invalidate it. However, the chance of getting the court's favour is slim, as the ministry announcement was made citing a Supreme Court precedent which ruled that directors should perform their duties with the diligence of a careful businessman, which duties were vested in the particular directors through the trust of the shareholders. Therefore, they shall perform their duties in person.

Apparently, it is more challenging than ever to convene a meeting of the shareholders or the board. The new rules have certainly caught the attention of company secretaries and directors, and it is prudent to expect some more developments in the near future.

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