

# SwissThai

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# LEGAL NEWS

## LEGAL DEVELOPMENTS OF BOARD MEETINGS

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Before September 10th, 2008, private companies had a fair amount of flexibility in holding meetings of the Board of Directors. Under the earlier practice, the Ministry of Commerce (MOC) accepted provisions fixed by the shareholders in the company's Articles of Association in any fashion, except those that were contrary to public order or good morals or against the law. Many companies adopted the utmost simplified provisions to convene and hold meetings of the Board of Directors by, for example, allowing directors to appoint proxies to attend and vote at meetings, or permitting directors to participate in meetings via electronic means, such as telephone or video conference. Additionally, circulated resolutions were permissible, if they were signed by all directors on either the same or separate copies.

On September 10th, 2008, the MOC issued an announcement to revoke these practices. Directors are no longer allowed to appoint proxies to attend and vote at the meetings; the directors must attend the meetings themselves. Circulated resolutions and conference via electronic means are also no longer allowed. The only flexible practice that remains in place under the present practice of the MOC is that meetings are allowed to be held either in Thailand or outside Thailand, if the latter is permitted in the company's Articles of Association; otherwise, the MOC has viewed that meetings shall be held in Thailand.

There has been significant debate about the merits of these new policies. Some observers have argued that the new policies are troublesome and out-of-date. Others, though, feel that they offer a better protective tool, especially for companies with different groups of directors appointed by each shareholder group. From this perspective, the requirement for directors to attend meetings in person will ensure that directors attend the meeting to serve the purposes of the law that a company is managed by a director or directors who shall apply the diligence of a careful businessman to conduct the business of the company. Moreover, this will prevent the possibility of meetings being held without the knowledge of the directors, as such meetings could be challenged and objections can be raised to the MOC to better protect the interests of all directors and, ultimately, all shareholders.

The MOC has requested cooperation from companies to amend their Articles of Association to comply with this announcement, and many companies have already done so. Other companies are reluctant to follow suit, and some have even made a legal argument that the MOC's announcement is not law. Regardless of whether or not companies amend their Articles of Association, the MOC does not accept meetings or resolutions that were held or passed in a manner contrary to the announcement.

Despite the announcement of these restrictions, many companies have continued with 'paper meetings' to pass resolutions. The MOC will accept registration documents if they are duly signed by the authorized director(s) registered with the MOC. The MOC will not inquire nor will they investigate whether the meeting was physically held and attended by directors with a sufficient quorum.

The new practice has introduced new burdens for many international companies, especially those that have many directors residing in different places, to organize board meetings. Having reviewed the results of a global law survey, the MOC has now reached the conclusion that most, if not all, developed countries permit board meetings via electronic means, but other measures, such as attending meetings by proxy and circulated resolutions, vary in different jurisdictions. To address this, the MOC has now decided to change course and remedy the obstacle by proposing a legal amendment to allow meetings via electronic means. The amendment has already been approved by the Cabinet and is now under review by the Council of State.

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