



Newsletter No. 16 (EN)

**Transfer of Shares and Shareholder Book
in Thailand**

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1. Introduction

The way shares are transferred under the Thai law varies according to the legal form of the company. In general, the transfer of shares does not require the consent of the company, but exceptions may apply when laid down in the regulations of the company (Articles of Association). However, all shares and the transfer of them have to be recorded in a Register of Shareholders.

2. The Register of Shareholders

The Register of Shareholders is different in a Thai Limited Company (Ltd.) and in a Public Limited Company (PLC). According to Sec. 1138 of the Civil and Commercial Code of Thailand (CCC) the register of a Ltd. must contain:

- (1) The names and addresses, and the occupations, if any, of the shareholders, a statement of the shares held by each shareholder, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each shareholder.
- (2) The date at which each person was entered in the register as a shareholder.
- (3) The date at which any person ceased to be a shareholder.
- (4) The numbers and date of certificates issued to bearer, and the respective numbers of the shares entered in each such certificate.
- (5) The date of the cancellation of any name certificate or certificate to bearer.

According to Sec. 61 of the Public Limited Company Act (PLCA) the register of a PLC must contain:

- (1) Names, nationalities and addresses of the shareholders;
- (2) Type, value, share certificate number and number of shares;
- (3) Date, month and year of registration of shareholdership or of termination of shareholdership.

The register of both forms of limited companies has to be kept at the registered office of the company. It is open to inspection by the shareholders and any shareholder is entitled to require a copy of such register against payment of an appropriate fee. The register is presumed to be correct evidence of any matters directed or authorised by law to be inserted therein (Sec. 1140, 1141 CCC; Sec. 62 PLCA).

3. Transfer of Shares of a Thai Limited Company

A Company Limited may have either share entered in a name certificate or certificates to bearer. In general, the shares are entered in name certificates, while certificates to bearer may only be issued if laid down in the regulations of the company (Sec. 1134 CCC). The certificate must contain the name of the shareholder or a statement that the certificate is to bearer (Sec. 1128, par. 2, No. 6 CCC). If the regulations of the company provide for certificates to bearer, the holder of a name certificate is entitled to receive a certificate to bearer on surrendering the name certificate to the company for cancellation (Sec. 1134 CCC).

The numbers and date of certificates issued to bearer, and the respective numbers of the shares entered in each such certificate must be contained in the Register of Shareholders of the company (Sec. 1138 CCC). All con-

versions of certificate must be laid down in the register.

Shares of a Limited Company may be transferred without any consent of the company (Sec. 1129 CCC). In regard to shares entered in a name certificate, this rule is subject to restrictions in the regulations of the company. The regulations of the company may direct that every transfer of these certificates require the assent of the company (Sec. 1129 CCC).

The transfer of shares entered in a name certificate is void unless made in writing and signed by the transferor and the transferee whose signatures shall be certified by one witness at least (Sec. 1129 CCC). The number of shares to be transferred must be laid down in the contract.

Against the company and third persons, the transfer is only valid after the fact of transfer and the name and address of the transferee have been entered in the Register of Shareholders (Sec. 1129 CCC). To guarantee a proper ordinary general meeting the transfer book may be closed during fourteen days preceding this assembly (Sec. 1131 CCC).

Shares entered in a certificate to bearer are transferred by the mere delivery of the certificate (Sec. 1135 CCC).

4. Transfer of Shares of a Thai Public Limited Company

The Transfer of Shares of a PLC does not require the assent of the company. To the contrary, the company is not allowed to stipulate any limitations in the transfer of shares (Sec. 57 PLCA). Limitations are only admissible, if such limitations are for preserving the rights and interest, which the company deserves lawfully or for maintaining the ratio of shareholdings between Thai and foreigner.

The Transfer of Shares is valid upon the transferor's endorsement of the share certifi-

cate by stating the name of the transferee and signed by both the transferor and the transferee and having delivered the share certificate to the transferee. The transfer has to be listed in the register of the company. Against the company the transfer is valid upon the company having received the application for registration; against outsiders the transfer is only valid after registration (Sec. 58 PLCA).

The company may refuse to register a transfer of share in the course of twenty-one days prior to each meeting of the shareholders (Sec. 60 PLCA).

5. Case Precedence

Supreme Court Decision Case No. 6908/2543 (2000)

Memorandum of understanding made between the plaintiff and the defendant which states that the defendant has paid for the shares price and that the plaintiff agrees to sign a signature for transfer of his shares to the defendant is considered an agreement to transfer the shares, not a share transfer according to paragraph 2 of Section 1129 of the CCC. However, it is not void solely on the ground that it does not comply with the form as prescribed in Section 1129.

Supreme Court Decision Case No. 5873/2543 (2000)

Share transferring can not be used against a third party unless it is written the name transferring and the place of the receiver in the shareholder book according to Sec. 1129 para 3 CCC. The plaintiff admitted that he did not notify the share transferring to the shareholder registrar, and the shareholder book still bore the plaintiff's name as the shareholder. The plaintiff, therefore, cannot argue against a third party that there is a share transferring. The plaintiff must bring dividends derived from those shares to calculate its corporate income tax.

Supreme Court Decision Case No. 2170/2542 (1999)

Having a statement on the conditional agreement on share transfer between the plaintiff and the defendant as follows: “At the date of concluding this agreement, the seller has made an instrument in writing of the share transfer as aforementioned agreed in Clause 1...” is not considered complying with the form of share transfer according to paragraph 2 of Section 1129 of the CCC which states that it must be in writing and signed by the transferor and transferee whose signatures shall be certified by one witness at least.

Supreme Court Decision Case No. 52/2540 (1997)

Share transferring contract, signed by the seller and not identifying the buyer, is made for the buyer’s convenience in order to chose whether to be named as a shareholder or to transfer to others. It is not against the law or invalid. The later buyer is in the position to proceed and finalise the transfer according to the law.

Supreme Court Decision Case No. 57/2540 (1997)

If the share transferring contract is not in compliance to Sec. 1129 para 2 CCC, the company has the right to deny the issuing of a share certificate.

Supreme Court Decision Case No. 4432/2540 (1997)

Share transferring according to Sec. 20 of the Securities and Exchange Act B.E. 2517

(1974) is not subject to Sec 1299 CCC. The ownership is transferred to the buyer immediately upon the sale. It does not need a written form, signatures by parties and witness, or a transfer registration. The transfer registration is just for the owner of the share to argue against the share-issuer company and a third party. It does not involve the completion of the sale of share.

Supreme Court Decision Case No. 6692/2540 (1997)

In case of the sale of share certificate along with share transferring document signed by the seller and not identifying the buyer, the parties have entered into the sale as the sale of one kind of property, not the sale of the share value since the share value would be changed all the time. Such sale of the share certificate is not the same as the share transferring according to Sec. 1299 CCC. Therefore, the sale of share certificate would be subject to the law of contract for sale of movable property. Without making them in writing, the contract of gift, the contract of exchange, and the contract of sale of share certificate are not invalid. Because the share certificate is transferred to a third party, it is a contract in favor of a third party. While a third party has stated its intention to take the benefit according to such contract, the company has to transfer the share to such third party.

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

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