

Newsletter No. 188 (EN)

**Rights and Protection of
Minority Shareholders
in Thailand**

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I. Introduction

Limited companies in Thailand are governed by the Civil and Commercial Code (hereafter “CCC”) which provides broad and flexible principles allowing shareholders to agree on the principle of freedom of contract.

Thenceforth, minority shareholders may suffer from a lack of protection of their interests and it is worth to highlight, in this context, the rights they are entitled to.

II. Minority shareholders’ rights

Given their small stake, minority shareholders have no control over the company, but are entitled to several “fundamental rights” which give them effective tools to protect their investment.

To exercise such rights, shareholders shall be registered as the owner of the shares and must have paid at least 25% of the shares’ par value. The evidence proving the ownership of share(s) is the records in the company’s shareholder book and the share certificate which must be issued by the Company to every shareholder. (The registration of the shareholder list with the Ministry of Commerce only has declarative, non-constitutive function.)

1. Shareholders’ management rights

The significant organs of a Thai private limited company are the board of directors and the shareholders. The board, authorised through the shareholders resolutions, is empowered to represent the company in dealing with third parties and carries out the company management. Accordingly, the

shareholders can theoretically play a key role in a company management.

a) Shareholders’ participation in shareholders’ meetings

There is a restricted procedure to call for a shareholders’ meeting as well as the determination of the agenda to be discussed in such meetings: Apart from the board of directors, only shareholders representing at least one fifth (1/5) of the company’s total voting rights can call for a meeting and set the agenda. However, Thai law ensures the rights of minority shareholders to effectively participate in the meeting through three different means:

- **Sufficient information** (the notice): The notice of the meeting shall provide detailed and relevant information to assist the shareholders’ understanding of the issues to be discussed. The Thai law ensures the adequacy of the information contained in the notice, the safe receipt of the notices by shareholders (sent by post with acknowledgement of receipt), and a sufficient time for shareholders to prepare for the meeting (not less than 7 days before the meeting, 14 days if it is for a special resolution). Companies are also required to publish the details of the meeting in a local newspaper. The non-compliance with these rules may trigger the nullity of all the decisions taken in the shareholders’ meeting.
- **Proxy voting**: Thai law provides the shareholders with the right to vote in the meetings even when they are unable to physically attend them. Such proxy voting is permissible only in writing and must be submitted to the chairman of the board.

- **The right to propose an agenda:** Although the issues to be discussed in the shareholders' meetings are proposed by the management, Thai law allows to take part in management (provided that the number of shareholders meets the legal criteria) by requesting the board of directors to include a matter as an agenda item at the shareholders' meeting.

b) Voting rules

Depending on the amount of their shareholdings, the shareholders' influence on a shareholders' resolution can be summarized as follows (based on the assumptions that no special articles of association or shareholders agreement grant additional rights to minority shareholders):

- **Shareholder representing more than 75% of the voting rights:** Absolute control over all the decisions to be made at shareholders' meetings due to the capacity to pass ordinary and special resolution on its own (such as capital increase, liquidation or winding up);
- **Shareholder representing more than 50% of the voting rights, but less than 75%:** Power to pass any ordinary resolutions at shareholders' meetings, but the agreement of other shareholders is needed to pass special resolutions;
- **Shareholder representing more than 25% of the voting rights, but less than 50%:** Right to require the company to convene an extraordinary meeting and power to block special resolutions;
- **Shareholder representing 20-25% of the voting rights:** Right to require the company to convene an extraordinary meeting but not able to influence the decision to be taken;
- **Shareholder representing less than 20% of the voting rights:** This Shareholder on its own is not able to require

the company to convene a shareholders' meeting and cannot influence the passing of any special resolution or ordinary resolution.

c) Minority shareholders' participation in the appointment of board members

Since the CCC does not specify any required number of directors, private companies can have a minimum of one director without any maximum. Their appointment as well as their removal requires an ordinary resolution (simple majority of votes), therefore major shareholders are normally controlling the company management and most of the time shareholders in the limited company and the management are the same person.

d) Additional shareholders' management rights

Shareholders are entitled to other rights from which minority shareholders may benefit. Among the most relevant, the following can be noticed:

- Every shareholder, disregarding the amount of shares held, has the right to inspect the minutes and records of the company's meetings. Additionally, every person (i.e. either shareholder or third person) is entitled to obtain a copy of a company's balance sheet for a fee not exceeding THB 20.
- Furthermore, the company is obliged to send out the financial statements to all shareholders at least three days prior to the Annual General Meeting and also to disclose a copy of the financial statements at the company's premises during this time. At the Annual General Meeting, every shareholder has the right to ask questions regarding the financial situation and the business of the company.

e) Shareholders' management rights under the articles of association or a shareholders' agreement

Following the principles of liberty of contract, there is no objection of granting additional rights to minority shareholders under the articles of association or a shareholders' agreement. Therefore, articles of association can be drafted in order to submit the approbation of specific matters to a "super majority" of shareholders, or to make the consent of specific shareholders mandatory. It is also possible to issue preference shares carrying additional voting rights and dividend rights for the minority shareholders.

In any case, to avoid any refusal from the Thai Ministry of Commerce, such provisions shall neither change the bottom line of the CCC, possibly affect any third parties nor conduct to unduly abuse the rights of other shareholders or directors.

Minority shareholders may notably be concerned and establish specific rights about the following issues:

- voting rights;
- appointment of board members;
- right to propose an agenda;
- decision to close or to start a new business;
- limitation on the company's rights to grant loans or to give guarantees;
- approval of the remuneration of directors and executives.

2. Proprietary rights of shareholders

a) Right to share the profits

Even if they do not aim to control the company, the minority shareholders expect increase in the value of the shares and dividends. According to Thai law, both the board of directors and the shareholders' meeting are empowered to distribute dividends (generally, in an annual meeting). Although minority shareholders are not able to

dominate the board or the shareholders' meeting, their right to dividends is not affected since the controlling shareholders aim to benefit from it too.

Moreover, it is also possible to issue preferential shares carrying higher dividend rights for the minority shareholders. Such option is particularly effective for foreign investors who aim to set up a Thai company where a majority of Thai shareholding is needed.

b) Protection of the initial investment

The principles of liberty of contract allow minority shareholders to a protection of their investment through specific clauses included in the company's articles of association or in a shareholders' agreement.

Among the great variety of clauses that can be tailored on a case-by-case basis, the most common clauses are the following:

- **Right of First Refusal:** right to purchase any existing shares to be sold on a pro-rata basis to maintain one's ownership percentage;
- **Pre-Emptive Rights:** right to purchase any newly issued share;
- **Put/call option:** compulsory sale or purchase of the shares upon the occurrence of defined situations;
- **Piggy-back Rights:** should a shareholder sell its shares, the piggy-back clause requires that anyone considering the purchase shall be able to buy 100% of the outstanding ones;
- **Capital Expenditure Approval:** approval required prior to any significant expenditure of capital.

III. Minority shareholder's remedies

1. Derivative actions

Beside direct law suits, Thai corporate law provides shareholders with the right to attempt derivative actions, i.e. actions intended against directors by shareholders on behalf of a corporation. The CCC allows any shareholder to bring an action against directors for their breach of duty if the company refuses to do so. As a precondition, the claiming shareholder shall not have approved the criticized acts of the directors and must enter its action within six months after the date of the general meeting on which such acts were approved.

The company's directors are required by law to manage their activities with the diligence of a careful businessman. Directors therefore have the duty to ensure the following:

- that payment for shares by the shareholders is actually made;
- the existence and regular keeping of books and documents prescribed by law;
- the proper distribution of dividends and interest as prescribed by law;
- the proper enforcement of the resolutions of general meetings.

Moreover, without the consent of the shareholders' meeting, a director cannot undertake activities similar to or competing with the ones carried on by the company.

2. Revocation of resolutions

Any shareholder, irrespective of its ownership interest, may challenge the calling of a meeting or a resolution passed contrary to the provisions of the CCC or contrary to the company's articles of association.

The claim shall be made in the Court which may cancel such resolution or any resolutions passed at such irregular general meeting, provided that the application is filed within one month after the date of the resolution.

3. Winding up of the company

Upon the occurrence of specific issues, any shareholder may petition to the court for the company to be wound up. Notable grounds on which a petition can be presented to the court are the following:

- If default is made in filing the statutory report or in holding the statutory meeting;
- If the company does not commence business within a year from the date of registration or suspends its business for a whole year;
- If the business of the company can only be carried on at a loss and there is no prospect of its fortunes being retrieved;
- If the number of the shareholders is reduced to less than three.

IV. Conclusion

While minority shareholders often have little or no ability to influence the management of a company, the law gives them all the means to monitor their interests.

Additionally, shareholders holding a share of 25% or less may consider to implement additional protection through a shareholders' agreement and articles of association to secure their interests.

On the other hand, any shareholder should be aware that, even though the protection of the minority shareholders may be minimal, certain formalities, particularly with regards to shareholders' meetings, have to be followed in order to comply with the law.

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

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