

Newsletter Nr. 188 (EN)

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

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I. Introduction

Limited companies established in Thailand, even though they are **foreign owned** companies, are governed by the Civil and Commercial Code (CCC). The CCC provides broad and flexible room in allowing shareholders to agree on management matters based on the principle of freedom of contract.

Minority shareholders usually enjoy less protection of their interests since they have less power in the company. This newsletter highlights their rights and remedies under Thai law.

II. Minority shareholders' rights

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

To exercise such rights, shareholders must be registered as a shareholder and must have paid at least 25% of the shares' par value. The official 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.

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.

a) Shareholders' participation in shareholders' 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 enough detailed and relevant information to assist the shareholders' understanding of the issues to be discussed. It also stipulates that the notice must be sent by post with acknowledgement of receipt at least 7 days before the meeting, and 14 days if it is for special resolutions. Non-compliance may trigger the nullity of all the decisions made in the meeting.
- **Proxy voting**: Thai law provides shareholders with the right to vote in the meetings even when they are unable to physically attend. However, such voting is permissible only in writing and the letter of power of attorney must be submitted to the chairperson of the board before or when the meeting is started.
- **The right to propose an agenda**: Although the issues to be discussed in the shareholders' meetings are proposed by the management, shareholders, subject to legal criteria, can also take part by requesting the board of directors to include a matter in the meeting agenda.

b) Voting rules

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

- **Shareholders representing more than 75% of the voting rights:** Absolute control over all decisions to be made at shareholders' meetings due to the capacity to pass ordinary and special resolutions on their own (such as capital increase, liquidation or winding up);
- **Shareholders representing more than 50% of the voting rights, but less than 75%:** Power to pass any ordinary resolutions at shareholders' meetings, but the approval of other shareholders is needed to pass special resolutions. This also includes the power to approve a dividend pay.
- **Shareholders 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.
- **Shareholders representing 20-25% of the voting rights:** Right to require the company to convene an extraordinary meeting but not able to influence decisions.
- **Shareholders representing less than 20% of the voting rights:** Not able on their own to require the company to convene a shareholders' meeting and cannot unilaterally influence the passing of any special resolutions or ordinary resolutions.

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

Since the CCC does not specify the number of directors, private companies can have a

minimum of one director without any maximum. Their appointment and removal only require 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

- **Right of inspection**
Every shareholder, regardless of the amount of shares held, has the right to inspect the minutes and records of the company's meetings. Additionally, a copy of a company's balance sheet can be publicly obtained for further inspection.
- **Right of inquiry**
At the Annual General Meeting (AGM), every shareholder has the right to ask questions regarding the financial situation and the business operation of the company. The company is obligated to send out the financial statements to all shareholders at least three days prior to the AGM. It is also obliged to disclose a copy of the statements at the company's premises during the meeting.

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

Following the principles of liberty of contract, there is no legal limitation of granting additional rights to minority shareholders under the articles of association or the shareholders' agreement. Therefore, they can be drafted to submit the approval 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.

To avoid any refusal from the Thai Ministry of Commerce, such provisions in the article of association must neither change the bottom line of the CCC by affecting any third parties nor unduly abuse the rights of other shareholders or directors.

Shareholders' agreement is a legal action based on a freedom of contract doctrine and is not binding to the company like the article of association. However, since it is the contract between the shareholders of the company, who have the power to influence the company decision through the board of management, the agreement will have some effects to the company. Thus, Minority shareholders may make a shareholders' agreement to protect their interests since it is less complicated to conclude than the articles of association. For example, in many companies, their founders may not have high numbers of shares but due to the shareholders' agreement, they usually have total control of shareholders' decisions.

However, since the shareholders' agreement is not binding to the company, we recommend that protection clauses for minority shareholders should be put into the article of association. Moreover, if there is a conflict between the shareholders' agreement and the article of association, the latter will prevail.

Minority shareholders may notably be concerned with and establish specific rights relating to the following issues:

- voting rights
- appointment of board members
- decision to end or start a new business
- limitation on the company's rights to grant loans or to give guarantees
- approval of the remuneration for directors and executives
- dividend pay out

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 the increase in value of the shares and dividends. According to Thai law, the shareholders are empowered to approve dividends pay (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 majority shareholders will benefit from it too.

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

b) Protection of the initial investment

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

Among the vast 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 of Last Look):** The right-holder has the right to review all other offers to buy the newly issued shares and purchase it by matching the highest offer. The seller cannot sell the shares to third parties until the right-holder refuse to buy the shares.
- **Right of First Offer (Right of First Look):** The newly issued shares must first be offered to the right-holder to make an offer to purchase and only when right-holder declines to make the offer, the share then can be offered to third parties.

- **Put/call option:** Compulsory sale or purchase of the shares upon the occurrence of defined situations.
- **Piggy-back Rights:** Should a majority shareholder sell his/her shares, the right-holder may offer to sell their shares to the third party for the same price as the majority shareholders'. The purchaser can then only buy the shares of the majority shareholder if he/she agrees to purchase all the shares.
- **Capital Expenditure Approval:** Approval required prior to any significant expenditure of capital. For example, purchase of land, building or machinery.

III. Minority shareholder's remedies

1. Derivative actions

Besides direct lawsuits, 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 must not have approved the disputed acts of the directors and must commence the legal action within six months after the date of the general meeting on which the acts were approved.

2. Revocation of resolutions

Any shareholder, irrespective of his/her share ownership interest, may challenge that the calling of a meeting or resolutions is contrary to the provisions of the CCC or the company's articles of association. The claim must be made to the competent court within one month after the date of the resolutions.

3. Winding up of the company

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

- The company does not commence business within a year from the date of registration or suspends its business for an entire year.
- The business of the company can only be carried on at a loss and there is no prospect of its capital being retrieved.
- The number of the shareholders is reduced to less than two.

IV. Conclusion

While minority shareholders often have little or no ability to influence the management of a company, the law gives them some means to monitor their interests. Additionally, shareholders holding a share of 25% or less may consider implementing additional protection through a shareholders' agreement and articles of association to secure their stakes in the company.

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