



# Chapter 2

COMPANY LAW

## CHAPTER 2 | COMPANY LAW

This chapter examines Title 22 of the Thai Civil and Commercial Code (the “CCC”), which governs private limited companies, and the Public Limited Company Act, B.E. 2535 (1992) (the “PLCA”), which governs public limited companies in Thailand. Please note that as at the date of this publication, a draft legislation to amend the CCC has been approved by the parliament. Such legislation will become effective after the lapse of 90 days from the publication date in the Government Gazette. Therefore, certain information contained in this publication may not be up to date once the Amendment to the Thai Civil and Commercial Code, B.E. 2565 (the “Amendment”) comes into force.

### (1) Shares

#### A. Private Limited Companies

##### (i) Classes of Shares

Private limited companies can issue both ordinary shares and preference shares. Therefore, the issuance of shares with different rights is permitted by statute. The preferential (or subordinated) rights attributed to the issued preference shares cannot be modified. Consequently, changes to the preferential rights of preference shares requires the cancellation of relevant preference shares through a capital reduction, and the subsequent issuance of new preference shares.

##### (ii) Share Certificates

Private limited companies are required to issue share certificates to their shareholders. Share certificates are not marketable securities but are positioned as a type of evidentiary certificate that proves the identity of the shareholder. Since rights are not vested in the share certificate itself, the transfer of rights cannot occur through a mere delivery of a share certificate unless it is a bearer certificate.

Share certificates must contain information, e.g., the company’s name, numbers of shares, the nominal value per share and name of holders, and must be signed by at least one director of the company.

Currently, the company’s seal is no longer required to be affixed on share certificates. Each share certificate is required to be affixed with stamp duty of Baht five.

Note that according to the Amendment, a company’s share certificate must be signed by at least one director of the company with the company’s seal affixed.

##### (iii) Share Register Book

A private limited company must prepare and maintain a share register book that contains the following information:

- the names, addresses, and occupations of the shareholders;
- the details, number of shares, and amount of paid-in capital of the shares owned by each shareholder;
- the date on which each shareholder became a shareholder;
- the date on which each shareholder ceased to be a shareholder;

- the numbers and dates of each certificate, and the share numbers entered on each certificate to the bearer; and
- the date of cancellation of any name or bearer certificate.

The share register book must be kept at the company's main office and remain available for gratis inspection by shareholders during business hours.

(iv) Subscription of New Shares and Payment

When subscribing to new shares, promoters, and shareholders of a company are not obligated to pay the entire nominal value of the shares up front. Instead, promoters and shareholders can subscribe to shares by paying an amount equal to at least 25% of share's nominal value. If less than the entire amount of the nominal value is paid, unless a resolution of the general shareholders' meeting is adopted otherwise, directors can demand payment of the remaining amount at any time by sending a notice to each shareholder via registered mail at least 21 days in advance before the payment due date.

(v) Transfer of Shares

*a. Methods of Share Transfer*

Under the CCC, to affect a valid transfer of shares entered in a named certificate, the transferor and transferee must execute a share transfer instrument and their signatures must be certified by at least one witness. The share transfer instrument must include the names of the transferor and transferee, the number of shares transferred, and the share numbers. For a share transfer to be valid against the company and third parties, the name and address of the transferee must be entered in the share register book.

*b. Restrictions on Share Transfer*

Share transfers in principle are not restricted unless transfer restrictions are stipulated in the company's articles of association. The method of restrictions is not limited by statute and may be freely designed.

*c. Acquisition by a Company of Its Shares*

Private limited companies are prohibited to hold their shares or take their shares as security.

(vi) Increase of Capital

Private limited companies may only issue new shares by increasing their capital through a special resolution passed at a general shareholders' meeting. A special resolution to increase the registered capital, and the amendment to the memorandum of association and (if required) the articles of association must be registered with the MOC within 14 days from the date of the adoption of the resolution.

When the company's capital is increased, shares must firstly be offered to the existing shareholders in proportion to the number of shares held by them. Only if there are any unsubscribed shares by the existing shareholders, other shareholders or directors can then subscribe to the newly issued shares.

Private limited companies, unlike public limited companies, may not issue debentures.

(vii) Reduction of Capital

A private limited company can reduce its capital by reducing the nominal value of each share issued or by reducing the number of shares issued. A capital reduction requires a special resolution by a general shareholders' meeting. The special resolution, the amendment to the memorandum of association, and (if required) the articles of association must be registered with the MOC within 14 days from the date of the adoption of the resolution. A company may not reduce its capital to less than 1/4 of its registered capital.

## B. Public Limited Companies

(i) Classes of Shares

A public limited company can issue preference shares as it is permitted under the PLCA. Any alteration to the preferential (or subordinated) rights attributed to the issued preferential shares is not permitted. Shareholders have the right to convert preference shares into ordinary shares only if such conversion rights are provided in the company's articles of association.

(ii) Share Certificates

A public limited company must issue share certificates within two months from the date of registration of the company, or from the date on which the payments on shares have been fully received by the company from the sale of unsold shares, or a capital increase (provided that the registration of a capital increase is completed).

In the case of a transfer of shares, the transferee may request a public limited company to issue a new share certificate by submitting an application signed by the transferee with one witness's signature and surrendering the existing share certificate, or other evidence, to a public limited company. If the company determines that the transfer of shares is lawful, it must enter the transfer into the share register book within seven days and issue a new share certificate to the transferee within one month from the date of receiving the request.

Share certificates must contain necessary information, e.g., the company's name, registration number, date of registration, share type, nominal value per share, numbers, and quantity of the shares to which the certificate applies, name of the shareholder, etc.

(iii) Share Register Book

A public limited company must retain a share register book and evidence related to all entries.

The share register book and supporting evidence may be kept at the head office of the company or at a different location by a third-party on behalf of the company. The share register book must be available for gratis inspection by the shareholders during business hours.

Entry of the transfer of shares in the share register book is not a condition for the transfer to take effect, or for the transfer to be enforceable against the company but is required for the transfer to be enforceable against third parties.

(iv) Subscription to Shares and Payment

The payment of the entire amount of the nominal value of subscribed shares is mandatory at the time of the subscription.

(v) Transfer of Shares

*a. Methods of Share Transfer*

To execute a valid transfer of shares, the name and title of the transferee must be stated on the back of the share certificate, the transferor and transferee must endorse the back of the share certificate, and the transferor must deliver the share certificate to the transferee. The transfer must then be entered into the share register book upon proper verification by the company.

*b. Restrictions on Share Transfer*

Generally, it is prohibited to specify restrictions on share transfer in the company's articles of association.

*c. Ownership by a Company of Its Shares*

Public limited companies are prohibited to own their shares or from taking their shares in pledge, except in some exceptional cases.

(vi) Issuance of New Shares

Public limited companies may issue new shares to be offered for subscription by existing shareholders, the public, or third parties, according to a resolution of a shareholders meeting.

In addition, public limited companies may issue debentures by a resolution adopted by the affirmative vote of at least 3/4 of the voting rights of the shareholders in attendance at a shareholders' meeting and entitled to vote.

(vii) Reduction of Capital

A public limited company can reduce its capital by reducing the nominal value of each share, the number of shares issued, or canceling any unsold shares.

When a company reduces its capital by reducing the nominal value of issued shares or by reducing the number of shares issued, the law requires a resolution adopted by an affirmative vote of at least 3/4 of the voting rights of the shareholders in attendance of the shareholders' meeting and entitled to vote. Unless it seeks to make up for accumulated losses, a company may not reduce its capital to less than 1/4 of the total amount of capital.

## (2) Bodies and Operations (Governance)

### A. Governance of Private Limited Companies

By statute, private limited companies must establish the following organizational bodies: (i) a board of directors (if there are multiple directors); (ii) directors with signatory authority; and (iii) auditors. An overview of each organization is set forth in Table 2-1.

**[Table 2-1] Overview of Private Limited Company Governance**

| General shareholders' meeting                                    |   |
|--|---|
| <b>Convening of an extraordinary general meeting<sup>1</sup></b> | <ul style="list-style-type: none"> <li>• The board of directors may summon extraordinary meetings whenever they see fit.</li> <li>• Directors must, without delay, summon such meeting when the company suffers a loss amounting to half of its registered capital to inform the shareholders of such a loss.</li> <li>• Shareholders holding not less than 1/5 of the shares of the company may request that the board of directors summon an extraordinary meeting by attaching their names to a letter specified "business to be considered".</li> </ul> |
| <b>Quorum<sup>2</sup></b>  | <ul style="list-style-type: none"> <li>• The quorum is constituted by an attendance of shareholders holding at least 1/4 of the capital of the company under the CCC.</li> <li>• Electronic meetings are allowed provided that certain rules under the Notification of the Ministry of Digital Economy and Society are complied with.</li> </ul>  |
| <b>Method of adopting resolutions</b>                            | <ul style="list-style-type: none"> <li>• Every shareholder present in person, or represented by proxy, has one vote. However, if two or more shareholders request a poll, or if provided for in the articles of association, voting can occur by a poll, and each shareholder has one vote for each share held.</li> <li>• Shareholders with special interests in a resolution do not have voting rights on that resolution.</li> </ul>   |
| <b>Ordinary resolution matters</b>                               | <ul style="list-style-type: none"> <li>• Director's power</li> <li>• Director's remuneration</li> <li>• Appointment and removal of directors</li> <li>• Director retirement by rotation</li> <li>• Approval of financial statements</li> <li>• Payment of dividends</li> <li>• Election of auditors (interpreted to include dismissal)</li> <li>• Remuneration of auditors</li> </ul>   |
| <b>Special resolution matters</b>                                | <ul style="list-style-type: none"> <li>• Amendment of the memorandum of association and articles of association</li> <li>• Capital increase by issuing new shares</li> </ul>  |

<sup>1</sup> According to the Amendment, a notice calling for a shareholders' meeting shall be delivered to all shareholders via registered mail, a newspaper publication is no longer required, except for the case that the company having share certificates issued to bearers, whereby the company shall also publish such notice in a local newspaper or in an electronic media.

<sup>2</sup> According to the Amendment, the quorum of a shareholders' meeting is constituted by an attendance of at least two shareholders, or their proxies, holding, totally, at least 1/4 of the capital of the company.

| General shareholders' meeting                       |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• Issuance of new shares by payment in kind</li> <li>• Reduction of capital</li> <li>• Dissolution</li> <li>• Mergers</li> </ul>   |
| <b>Resolution requirements</b>                      | <ul style="list-style-type: none"> <li>• Ordinary resolutions: approval by a majority of the voting rights held by shareholders in attendance and entitled to vote. In the case of a tie vote, the chairman of the meeting casts the deciding vote.</li> <li>• Special resolutions: approval by at least 3/4 of voting rights held by shareholders in attendance and entitled to vote.</li> </ul>           |
| Board of directors <sup>3</sup>                     |   |
| <b>Number of directors and qualifications</b>       | <ul style="list-style-type: none"> <li>• The board of directors must contain at least one director.</li> <li>• No nationality or residency requirements.</li> </ul>   |
| <b>Term of office of directors</b>                  | <ul style="list-style-type: none"> <li>• 1/3 of directors must resign at the first general shareholders' meeting each year (if the number is not a multiple of three, then the number nearest to 1/3). Directors may be re-appointed.</li> </ul>  |
| <b>Quorum</b>                                       | <ul style="list-style-type: none"> <li>• Unless the quorum is fixed in the articles of association, the board of directors with more than three members requires an attendance of at least three directors to form a quorum.</li> <li>• Electronic meetings are allowed provided that the certain rules under the Notification of the Ministry of Digital Economy and Society are complied with.</li> </ul> |
| <b>Resolution requirements</b>                      | <ul style="list-style-type: none"> <li>• A resolution requires an approval by a majority of the directors in attendance.</li> <li>• In the case of a tie vote, the chairman of the board casts the deciding vote.</li> </ul>  |
| Persons who carry out business                      |   |
| <b>Persons with signatory authority</b>             | <ul style="list-style-type: none"> <li>• Directors with authority to sign on behalf of the company must be registered.</li> </ul>   |
| <b>Persons authorized by the board of directors</b> | <ul style="list-style-type: none"> <li>• The board of directors may delegate authority to managers or committees.</li> </ul>  |
| Financial auditors                                  |   |
| <b>Qualifications</b>                               | <ul style="list-style-type: none"> <li>• Financial auditors must not have an interest in any transaction of the company, other than being a shareholder. No director, agent or employee of the company is eligible to be an auditor.</li> <li>• Financial auditors must be a certified public accountant in Thailand.</li> </ul>  |
| <b>Term of office</b>                               | <ul style="list-style-type: none"> <li>• The term continues until the next ordinary general shareholders' meeting, and financial auditors may be re-elected.</li> </ul>   |

## B. Governance of Public Limited Companies

A public limited company must establish statutory organizational bodies, which include: (i) a board of directors, directors with signatory authority; and (ii) auditors. In the case of a publicly traded company, appointments of independent directors and the creation of an audit committee are also required. An overview of each organization is set forth in Table 2-2.

<sup>3</sup> According to the Amendment, electronic meeting of directors is allowed unless prohibited by the company's articles of association.

**[Table 2-2] Overview of Public Limited Company Governance**

| <b>General shareholders' meeting</b>  |   |
|---|---|
| <b>Convening an Extraordinary General Meeting</b>   | <ul style="list-style-type: none"> <li>• The board of directors may summon a meeting at any time.</li> <li>• Shareholders holding not less than ten percent of the total number of shares sold may request that the board of directors summon a meeting at any time by subscribing their names to a letter specified "business to be considered".</li> <li>• Notice and other relevant documents can be sent to shareholders online if such persons declare an intention or provide consent to do so.</li> </ul>  |
| <b>Quorum</b>   | <ul style="list-style-type: none"> <li>• The quorum is constituted by an attendance by at least 25 shareholders or not less than half of the total shareholders, and attendance by shareholders holding at least 1/3 of the number of shares sold.</li> <li>• Electronic meetings are allowed (as per amendment to the PLCA that became effective on 24 May 2022).</li> </ul>   |
| <b>Method of adopting resolutions</b>   | <ul style="list-style-type: none"> <li>• A resolution will be adopted by votes at the general shareholders' meeting.</li> </ul>   |
| <b>Ordinary resolution matters</b>  | <ul style="list-style-type: none"> <li>• Issuance of shares at a price lower than the registered nominal value</li> <li>• Approval of transfers of shares less than two years after the registration of the company</li> <li>• Election of directors</li> <li>• Approval of the balance sheet and statement of profit and loss</li> <li>• Approval of dividends</li> <li>• Approval of share dividends</li> <li>• Approval of use of reserve fund to compensate for accumulated losses</li> <li>• Appointment and determination of remuneration of auditors</li> <li>• Reduction of capital by canceling unissued registered shares</li> <li>• Appointment and dismissal of liquidators and auditors during liquidation</li> <li>• Approval of liquidation balance sheet and liquidation statements of profits and losses</li> <li>• Approval of reports on the results of liquidation</li> </ul> |
| <b>Other resolution matters (required 75% of total votes of the shareholders attending the meeting)</b> | <ul style="list-style-type: none"> <li>• Amendment of the memorandum of association and articles of association</li> <li>• Approval of setoffs of the payment of share price, against claims held against the company</li> <li>• Transfer or sale of all, or the principal part, of the business</li> <li>• Purchase or acquisition of the business of another company</li> <li>• Executing, amending, or terminating a lease agreement for all, or the principal part, of the business, outsourcing management, and amalgamating the business with the objective of sharing profits and losses</li> <li>• Increasing capital</li> <li>• Reducing capital by reducing the nominal value of shares or the number of shares</li> <li>• Issuing debentures</li> </ul>  |



| <b>General shareholders' meeting</b>                              |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>• Mergers</li> <li>• Dissolution</li> </ul>   |
| <b>Resolution requirements</b>                                    | <ul style="list-style-type: none"> <li>• Ordinary resolutions: a resolution requires an approval by a majority of the voting rights exercised by shareholders in attendance. In the case of a tie vote, the chairman of the meeting casts the deciding vote.</li> <li>• Other resolutions: a resolution requires an approval by at least 3/4 of the number of votes of the shareholder attending the meeting and entitled to vote.</li> </ul>  |
| <b>Director remuneration</b>                                      | Determination of director remuneration requires a resolution adopted with the affirmative votes of at least 2/3 of the voting rights of shareholders in attendance.  |
| <b>Dismissal of directors</b>                                     | Dismissal of a director requires a resolution adopted by the affirmative votes of at least 1/2 of the aggregate number of shares held by the shareholders in attendance and entitled to vote, and with at least 3/4 of shareholders in attendance and entitled to vote.  |
| <b>Board of directors</b>   |  |
| <b>Number of directors and qualifications</b>                     | <ul style="list-style-type: none"> <li>• The board of directors must contain at least five directors, of which not less than half of the total number of directors must reside in Thailand.</li> <li>• In the case of a listed company, the election of independent directors equal to at least 1/3 of the total number of directors (which must be at least three).</li> </ul>  |
| <b>Term of office</b>   | <ul style="list-style-type: none"> <li>• In principle, until the next ordinary general shareholders' meeting.</li> <li>• When the articles of association provide that the election of directors will be performed by a method that differs from the cumulative voting, the terms of office of 1/3 of directors will expire at each ordinary general shareholders' meeting (if the number is not a multiple of 3, then the number nearest to 1/3).</li> <li>• Re-election is permitted.</li> </ul> |
| <b>Quorum</b>   | <ul style="list-style-type: none"> <li>• The quorum is constituted by an attendance of not less than half of all directors.</li> <li>• Electronic meetings are allowed (as per amendment to the PLCA that became effective on 24 May 2022).</li> </ul>   |
| <b>Resolution requirements</b>                                    | <ul style="list-style-type: none"> <li>• A resolution requires an approval by a majority of the directors in attendance.</li> <li>• In the case of a tie vote, the chairman of the board casts the deciding vote.</li> </ul>   |
| <b>Persons who carry out business</b>                             |  |
| <b>Persons with signatory authority</b>                           | <ul style="list-style-type: none"> <li>• Directors with the authority to sign on behalf of the company must be registered.</li> </ul>  |
| <b>Persons authorized by the board of directors</b>               | <ul style="list-style-type: none"> <li>• One or more directors or other persons authorized by the board of directors may be authorized to act on behalf of the company in place of the board of directors.</li> </ul>  |
| <b>Audit committee (in the case of a publicly-traded company)</b> |  |
| <b>Number of members and qualifications</b>                       | <ul style="list-style-type: none"> <li>• Audit committee must contain at least three people.</li> <li>• Audit committee must be independent directors and must meet additional qualification requirements.</li> </ul>  |

| General shareholders' meeting |  |
|-------------------------------|--|
| Auditors                      |  |
| <b>Qualifications</b>         | <ul style="list-style-type: none"> <li>• Auditors must not be directors, staff, employees, or officers of the company.</li> <li>• Auditors must be a certified public accountant in Thailand.</li> </ul> |
| <b>Term of office</b>         | <ul style="list-style-type: none"> <li>• The term continues until the next ordinary general shareholders' meeting and may be re-appointed.</li> </ul>  |

### (3) Company Accounting

#### A. Accounting of Private Limited Companies

##### (i) Accounting Records

The directors of private limited companies must prepare account books that accurately record the company's income, expenditures, assets, and liabilities.

##### (ii) Auditor(s)

The auditor(s) may access books and accounts of the company at any time. Auditors must submit a report regarding the balance sheet and statement of profit and loss at the ordinary general shareholders' meeting.

##### (iii) Financial Statements

A private limited company must obtain approval of the balance sheets from the general shareholders' meeting within four months of the record date of the balance sheet. A copy of the audited balance sheet must be delivered to each shareholder listed in the register of shareholders at least three days prior to the date of the general shareholders' meeting.

##### (iv) Distribution of Profits

###### a. *Provisions on the Declaration of Dividends*

In principle, shareholders' approval is required to declare a dividend, but in cases in which there are sufficient profits to declare an interim dividend, directors may discretionarily declare such dividends.

###### b. *Distributable Amount*

Dividends may be paid only from the company's profits, and if the company has an accumulated loss, it may not declare a dividend until it has paid off the accumulated loss.

When paying dividends, the company must appropriate at least five percent of the net profits to a statutory reserve fund until the reserve fund reaches at least ten percent of the company's registered capital.

###### c. *Payment of Dividends*

A company is required to pay dividends within one month from the date of resolution approving dividend payment. The company must send a notice of dividend payment to

its shareholders and, if there are shares entered in a certificate to bearer, publish a notice of dividend payment in a local newspaper.

According to the Amendment, the distribution of dividend shall be complete within one month from the resolution date of either shareholders' meeting or board of directors' meeting, as the case may be.

## **B. Accounting of Public Limited Companies**

### (i) Account Books

A public limited company must prepare and maintain account books.

### (ii) Auditors

The auditors may access the company's books, documents, and other evidence related to income, expenditures, assets, and liabilities of the company at any time during business hours. In addition, auditors must prepare and submit reports to the ordinary general shareholders' meeting, as specified by law and must also participate in the ordinary general shareholders' meetings during which financial statements are approved.

### (iii) Financial Statements

The board of directors of a public limited company must obtain approval of financial statements during the ordinary general shareholders' meeting. This meeting must be held within four months from the end of the fiscal year. The copies of the audited financial statements and the accounting auditor's report must be delivered together with the notice convening the general shareholders' meeting.

### (iv) Distribution of Profits

#### *a. Provisions Related to the Declaration of Dividends*

The declaration of dividends requires approval from the general shareholders' meeting. However, if the company's articles of association do not prohibit, and the directors determine that there are sufficient profits to declare an interim dividend, the directors may declare interim dividends. If the interim dividend has been paid, the company must report the payment to the shareholders at the next shareholders' meeting.

#### *b. Distributable Amount*

The dividends may be paid only from the company's profits, and if the company has accumulated losses, it may only pay dividends upon paying off the accumulated losses.

When paying dividends, the company must allocate at least five percent of the net profits generated during the relevant fiscal year to a statutory reserve fund until the reserve fund reaches at least ten percent of the company's registered capital.

#### *c. Payment of Dividends*

Payment of dividends in a public limited company is the same as in a private limited

company where a company is required to pay dividends within one month from the date of resolution approving dividend payment. The company must send a notice of dividend payments to its shareholders and publish a notice of dividend payment in a local newspaper.

#### **(4) Dissolution and Liquidation**

##### **A. Dissolution and Liquidation of a Private Limited Company**

The starting point for the process of terminating a company's juristic personality is dissolution. Different types of dissolution include a voluntary dissolution pursuant to a special resolution of the company's general shareholders' meeting and dissolution pursuant to a court order. A liquidator will be appointed by the general meeting of shareholders to supervise the dissolution and liquidation processes.

##### **B. Dissolution and Liquidation of a Public Limited Company**

The dissolution of a public limited company occurs through voluntary dissolution pursuant to a resolution of the general shareholders' meeting, corporate bankruptcy, or a court order.

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#### **Co-authors:**

Peangnate Sawatdipong, Partner – peangnate.s@mhm-global.com  
Patthanawach Nuntawowart, Senior Associate – patthanawach.n@mhm-global.com  
Sirawan Fuengfoosin, Senior Associate – sirawan.f@mhm-global.com  
Piyavadee Threepopnartgul, Associate – piyavadee.t@mhm-global.com  
Tumawadee Attavavuthichai, Associate – tumawadee.a@mhm-global.com