

Can you hold your own Thai Company shareholders meeting?

Do you think that you can make decision in your company without other shareholders? First of all it is important to note that the Thai Civil and Commercial Code (“CCC”) Section 1237(4) requires every private Thai limited to maintain at least 3 shareholders or risk court ordered dissolution of the company.

Perhaps in your case, however, you structured your company in a way that you have the majority of the voting rights in your company. Therefore, you ensured that the other shareholders cannot outvote you in shareholders’ meetings. You might now believe that you are able to take any decision in your company without the necessity to consult other shareholders. However, in order for the shareholders to vote the CCC requires that they meet. Thus, what are the requirements for a shareholders’ meeting?

In order to hold a legally proper shareholders’ meeting an invitation to all shareholders must be sent by registered post at least seven days before the meeting and also by publishing the invitation in a local newspaper at least seven days before the meeting. The invitation must include a description of the subject matter(s) of the meeting *e.g.* resolution(s) to be considered and voted on unless the meeting is to consider a “special resolution” in which case the invitation must be sent and published at least fourteen days before the meeting. Special resolutions concern matters which generally require a higher majority vote to pass and are matters defined by Thai law and in some case also the “articles of association” the internal rules of the company itself.

After having performed in accordance with the above mentioned regulations, however, what happens if on the day of the scheduled meeting, no other shareholder shows up; only you, with your voting majority rights, attends the shareholders’ meeting. Obviously you hold the majority of the voting rights, but is that enough to constitute conduct a legal shareholder’s meeting?

The first hurdle is the quorum requirement. Under CCC Section 1178, at least 25% of the CAPITAL has to be represented to form such quorum. Let's assume that you actually own more than this 25%. Can you then hold that shareholders' meeting by yourself? Remember, in our hypothetical, you own more than 25% of the capital of the company and you also have the majority of the voting rights. Interestingly, in 1965 the Council of State has issued a legal opinion on this very issue. It discussed the term "meeting" and its meaning. The Council of State argued:

"Regarding the word "meeting", its definition under general understanding means an assembly or conference of persons to discuss certain issues. With reference to Thai Dictionary of The Royal Institute, it provides the meaning of the word that "comes together, assembly of persons, discussing together, and gathering". Therefore, it is deemed that a meeting for any matters whatsoever means gathering of two persons or more to discuss. If there is only one person, it is not the meeting."

The Council of State further argues that the actual purpose of a shareholders' meeting is to have a discussion between the shareholders. Only a meeting between at least two individuals would enable such discussion. Therefore, according to the Council of State at least two individuals are required to constitute a meeting in accordance with the "spirit of the law". Whether a Thai court would concur with this legal opinion is not entirely clear. In any event, in light of such opinion, if you wish to be certain that your shareholders' meeting is lawful, it would be advisable to be sure to have at least two shareholders' in attendance at any formal meeting.

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