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# Corporate Governance

## Thailand

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# 2021

## Law and Practice

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## 1. INTRODUCTION

### 1.1 Forms of Corporate/Business Organisations

There are five principal forms of business organisations in Thailand, namely:

- unregistered ordinary partnerships;
- registered ordinary partnerships;
- limited partnerships;
- limited liability companies; and
- public limited companies.

The database of the Department of Business Development for the first quarter of 2021 indicates that the most popular form of business organisation in Thailand is the limited liability company.

The popularity of the limited liability company is based on the stipulation that shareholders are only liable for the amount (if any) remaining to be paid up on the shares they are holding. The Public Limited Company Act B.E. 2535 (1992) (PLCA) imposes more rules and compliance requirements on public limited companies than those imposed by the Civil and Commercial Code (CCC) on limited liability companies.

The public limited company is used for publicly held companies, whether or not listed on the Stock Exchange of Thailand (SET) or the Market for Alternative Investment (MAI) (collectively, the Thai Stock Markets).

### 1.2 Sources of Corporate Governance Requirements

The principal corporate governance requirements for unregistered ordinary partnerships, registered ordinary partnerships, limited partnerships and limited liability companies are prescribed in the CCC and the relevant regulations issued thereunder by the Ministry of Commerce (MOC).

The corporate governance requirements for public companies in Thailand are prescribed in the PLCA and the relevant regulations issued by the MOC.

Public limited companies listed on the Thai Stock Markets (“listed companies”) are, in addition to the corporate governance requirements applicable to unlisted companies under the PLCA, required to comply with the Securities and Exchange Act B.E. 2535 (1992) (SEA) and related regulations issued by the Capital Market Supervisory Board of the Securities and Exchanges Commission (SEC) and the regulations issued by the SET. After their initial public offering, the corporate governance requirements for listed companies on the SET and MAI are the same.

Additionally, the Corporate Governance Code 2017 (CG Code) issued by the SEC includes voluntary guidelines from the Thai Investors Association for Listed Companies.

### 1.3 Corporate Governance Requirements for Companies with Publicly Traded Shares

All listed companies are required to comply with the requirements under the SEA and related regulations, as well as regulations issued by the SEC and the SET as mentioned above.

To maintain their listed status, listed companies must meet certain qualification requirements throughout the period of their listing, including:

- the directors, management and controlling persons are trustworthy and suitable and possess the qualifications required by the relevant regulations;
- the chief financial officer and accounting supervisor are qualified as required by the relevant regulations;

- the chairman of the board of directors does not also hold a management (or equivalent) position, pursuant to the criteria as required by the relevant regulations;
- one-third of the directors are independent and there are at least three independent directors possessing the qualifications as specified by the relevant SET and SEC regulations;
- the audit committee has at least three members possessing qualifications as specified by the relevant SET and SEC regulations;
- an SEC-approved auditor is appointed;
- an internal control system is in place as per the requirements of the relevant regulations;
- the companies and their subsidiary(ies) have no conflict of interest as specified under the relevant regulations; and
- at least 150 free-float shareholders hold at least 15% of the paid-up capital.

Listed companies are also required to publicly and promptly disclose significant information that is essential for the decision-making of investors.

Listed companies commonly implement the CG Code issued by the SEC and guidelines issued by the Thai Investors Association to promote high corporate governance standards on a voluntary basis.

## **2. CORPORATE GOVERNANCE CONTEXT**

### **2.1 Key Corporate Governance Rules and Requirements**

Corporate governance rules and requirements are explained under each section of this chapter. Generally, the articles of association (AOA) set out the key corporate governance requirements that apply for each limited liability company and public limited company.

### **2.2 Environmental, Social and Governance (ESG) Considerations**

Sustainable investment is increasingly important to investors in Thailand. Therefore, it is important for listed companies to disclose environmental, social, and governance (ESG) information. The SET has provided guidelines on disclosing ESG information, although it is not a statutory requirement to do so. Listed companies are only required to disclose corporate social responsibility (CSR) information under Section 10: Corporate Social Responsibilities of an annual report according to Notification of the Capital Market Supervisory Board No 44/2556 on Rules, Conditions and Procedures for Disclosure regarding Financial and Non-financial Information of Securities Issuers (as amended). For the year 2021, listed companies are required to disclose CSR information in Form 56-1 One Report (a new annual performance report that merges the annual registration statement (Form 56-1) and the annual report (Form 56-2)).

## **3. MANAGEMENT OF THE COMPANY**

### **3.1 Bodies or Functions Involved in Governance and Management**

The principal bodies involved in the governance and management of a limited liability company are the general meeting of shareholders (“shareholders’ meeting”) and the board of directors. The shareholders’ meeting is the highest governing body in a limited liability company, while the board of directors manages the company in accordance with the CCC and the AOA, and is supervised by the shareholders’ meeting.

Public limited companies are governed by their shareholders and managed by their board of directors. Generally, each member of the board of directors is appointed by the shareholders. Directors of public companies must possess

qualifications specified by the PLCA. The board of directors has the duty to oversee the management and conduct of business operations of public limited companies in accordance with its objectives, AOA and resolutions of the shareholders.

As public limited companies, listed companies are governed and managed by the same bodies under the same set of requirements. In addition, higher requirements are imposed on listed companies. Listed companies are required to (i) have at least one-third of their board of directors consist of independent directors, with a minimum of three independent directors, and (ii) establish an audit committee consisting of at least three members. Additional sub-committees may be appointed for specific purposes.

### **3.2 Decisions Made by Particular Bodies**

#### **Limited Liability Company**

Generally, the board of directors has the duty to manage the company on a day-to-day basis. Normally, a resolution passed at the board of directors' meeting is passed by a simple majority vote. The board of directors may seek approval from the shareholders by convening and proposing the matter to a general meeting of the shareholders.

Under the CCC, there are specific matters that require the approval of a shareholders' meeting. Normally, a resolution at a shareholders' meeting is passed by the affirmative vote of a simple majority of the shareholders present at the meeting in person or by proxy – eg, approval of the audited financial statements at the fiscal year end. For matters that require a special resolution, not less than three-fourths of total votes of the shareholders present at the meeting and entitled to vote are required.

Pursuant to the CCC, the following matters require a special resolution at a shareholders' meeting:

- amendment of the memorandum of association (MOA) or AOA;
- increase or reduction of registered capital;
- dissolution of the company;
- amalgamation with another company; and
- allotment of new shares as fully or partly paid-up otherwise than for cash.

#### **Public Limited Company**

Generally, public limited companies are managed by their board of directors. The board of directors has the authority and duty to manage the company. However, public limited companies are governed by their shareholders. The PLCA stipulates certain matters that require the approval of the shareholders, including:

- annual dividend payment;
- approval of financial statements;
- appointment of directors;
- determination of directors' remuneration;
- appointment of auditor;
- determination of auditor's remuneration;
- increase or reduction of registered capital;
- amendment of the MOA or AOA;
- amalgamation with another company;
- entering, amending or terminating contracts relating to the leasing out of the whole or important parts of the business of the company;
- sale or transfer of the whole or a part of the business to a third party; and
- purchasing or receiving the business of another company.

In the case of listed companies, some other matters are also reserved for the shareholders' meeting, such as the acquisition or disposal of material assets of the company and entering

into connected transactions, subject to specific thresholds.

### **3.3 Decision-Making Processes**

#### **Limited Liability Company**

Any director may call a meeting of directors at any time. Normally, a physical board meeting is required and the directors must attend the board meeting in person. However, due to the COVID-19 pandemic, a board meeting may now be held electronically in accordance with the methods and requirements under the Emergency Decree for Electronic Meetings B.E. 2563 (Emergency Decree). A resolution at a board meeting is normally passed by a simple majority vote.

The board of directors may call a shareholders' meeting when appropriate or upon a request made in writing by shareholders holding not less than one-fifth of the shares of the company. When a request for a shareholders' meeting is made by shareholders, the directors must forthwith call the meeting without delay. The board of directors must issue a notice of the shareholders' meeting and the notice must be advertised in a local newspaper and delivered to every shareholder. If the shareholders' meeting is to be held electronically, the notice calling the meeting and related documents may be delivered via electronic methods instead of by post. Copies of those documents must be maintained properly as evidence by the meeting organiser and may be stored in the form of electronic data.

As with a board meeting, a physical meeting is required but the shareholders may appoint a proxy to attend and vote on their behalf. Again, a shareholders' meeting can be held electronically in accordance with the methods and requirements under the Emergency Decree.

A resolution of a shareholders' meeting may be passed by a special resolution or by a simple majority depending on the subject matter of

the resolution. A shareholder who has a special interest in any matter on which a resolution is to be passed at a shareholders' meeting may not vote on the matter.

Subject to the AOA, the chairman may have a casting vote in the case of a tied vote, both in a board of directors' meeting and a shareholders' meeting.

#### **Public Limited Company**

Please refer to **5.3 Shareholder Meetings**.

Under the PLCA, the board of directors must hold a meeting ("board of directors' meeting") at least once every three months. The chairman of the board of directors may call a board of directors' meeting or at least two directors may submit a request to the chairman to call a board of directors' meeting. A notice must be delivered at least seven days prior to the meeting date, except in the case of necessity or urgency.

At the board meeting (whether physical or electronic), at least one-half of the directors are required to be present to constitute a quorum. Normally, directors must be physically present at the meeting venue; however, the board of directors' meeting may be held by electronic methods in accordance with the methods and requirements under the Emergency Decree.

In casting votes, each director has one vote. Any director having any interest in a particular matter may not vote on the matter. A resolution of the board of directors is passed by a simple majority of votes. In the case of a tied vote, the chairman of the board of directors has an additional casting vote.

## 4. DIRECTORS AND OFFICERS

### 4.1 Board Structure

#### Limited Liability Company

Under the CCC, the structure of the board of directors is single tier and consists of at least one director who must be an individual, not a legal entity. There is no maximum number of board members specified under the CCC. The shareholders' meeting can fix the number of board members as it deems fit, unless otherwise stipulated in the AOA.

#### Public Limited Company

The PLCA requires a public limited company to have a board of directors that is responsible for the oversight of the management of the company and conduct its business operations. In principle, the structure of the board of directors is a "one-tier board" or "unitary board" whereby the board comprises both executive and non-executive directors and has the responsibility to consider and approve any material business decision and oversee the management of the company.

Although not required under the PLCA, the board of directors may consider appointing sub-committees to consider specific issues and propose opinions for the consideration and approval of the board of directors – for example, an executive committee, audit committee, nominations committee, remuneration committee, and/or corporate governance committee. Listed companies must have an audit committee.

### 4.2 Roles of Board Members

#### Limited Liability Company

Under the CCC, distinct roles are not specified for members of the board of directors.

Directors manage the company under the control of the shareholders' meeting and in accordance

with the AOA. Directors have fiduciary duties to the company and the company's shareholders, and must perform their duties responsibly, with due care and loyalty.

However, the chairman who is elected by the board of directors has extraordinary roles in certain cases:

- if not prohibited by the AOA, the chairman has a casting vote at a board of directors' meeting; and
- the chairman must preside at every board of directors' meeting and shareholders' meeting.

#### Public Limited Company

The members of the board of directors who are authorised directors of a public limited company have the role of representing and acting on behalf of the company. Apart from the authorised directors, the PLCA does not prescribe specific roles for members of the board of directors. Rather, members of the board of directors must work collectively to carry out their duties.

Listed companies are required to have a board of directors and appoint independent directors and audit committee members. The audit committee members of listed companies have specific roles in relation to reviewing the company's financial report, the internal control and internal audit system, related party transactions of the company, the appointment of the auditor of the company as well as the legal compliance of the company.

### 4.3 Board Composition Requirements/ Recommendations

#### Limited Liability Company

Apart from those detailed in **4.1 Board Structure** and **4.2 Roles of Board Members**, there are no special requirements for the composition of the board of directors except when provided otherwise in the AOA.

**Public Limited Company**

The PLCA requires that the board of directors must consist of at least five directors and not less than one-half of all directors must reside in Thailand.

In the case of listed companies, the regulations further require that (i) one-third of the total directors but not less than three persons must be independent directors, and (ii) at least three directors in the board of directors must be members of the audit committee. The qualifications for both independent directors and members of the audit committee must comply with the requirements and guidelines of the SET and the Capital Market Supervisory Board.

The CG Code also suggests that the board of directors of listed companies should not consist of more than 12 directors, depending on the size, type and complexity of the business. The board of directors should also be comprised of directors with varied qualifications, skills, experience, capabilities and specific characteristics and should consist of one non-executive director who has experience in the current business of the company. In addition, the proportion between executive directors and non-executive directors should support checks and balances – that is, the majority of the board of directors should be non-executive directors in order to consider matters and provide opinions with independent judgement.

**4.4 Appointment and Removal of Directors/Officers****Limited Liability Company**

In principle, directors are appointed by the shareholders' meeting. However, if the AOA allow, the board of directors' meeting may appoint a director to fill a vacancy.

The removal of a director can be approved only by the shareholders' meeting.

**Public Limited Company*****Appointment of directors***

A director may be elected at a shareholders' meeting or a board of directors' meeting (but only to fill a vacancy) in accordance with the rules and procedures prescribed under the PLCA. Unless otherwise specified in the AOA, the persons who are elected as directors will be those who receive the highest number of votes, in descending order, according to the number of directors who are to be elected. In the event of a tie for the last position to be elected, the chairman of the meeting will have a casting vote.

A director must be a natural person and must possess the qualifications prescribed under the PLCA, such as: must not be an insolvent, incompetent or quasi-incompetent person, and must not have been sentenced to imprisonment by a final judgment for an offence against property committed dishonestly. For listed companies, apart from the qualifications prescribed under the PLCA, a director must not possess characteristics disqualifying him or her from being trusted to manage a public company, as prescribed by the SEC, such as:

- a person who is banned from holding or resuming the position of director or manager, a person with managerial power or an advisor to a financial institution on the ground of having specified prohibited characteristics; or
- a person having been sentenced to imprisonment by a final judgment for an offence in connection with public fraud.

***Removal of directors***

At every annual general shareholders' meeting, unless otherwise provided in the AOA, the entire board of directors must be up for election. The existing members of the board of directors may remain in place to serve as the acting board of directors until the new board of directors takes over. If the AOA prescribes different procedures

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for the election of the directors, one-third of the directors must retire at every annual general meeting of the shareholders. If the number of directors to retire is not exactly one-third, the number nearest to one-third will apply. The directors who are due to retire are the directors who have served in the position longest.

The shareholders' meeting may also pass a resolution removing any director from his or her position prior to the expiration of the term, by a vote supported by not less than three-fourths of the number of shareholders present at the meeting and entitled to vote and by shareholders holding in aggregate not less than one-half of the number of shares held by the shareholders present at the meeting and entitled to vote.

In addition to retiring on the normal expiry of his or her term of office, a director will retire upon:

- death;
- resignation;
- non-compliance with any of the qualifications prescribed by applicable laws;
- a shareholders' resolution for removal; and
- a court order.

For listed companies, a director must also be removed if he or she possesses characteristics disqualifying him or her from being trusted to manage a public company, as prescribed by the SEC.

## **4.5 Rules/Requirements Concerning Independence of Directors**

### **Limited Liability Company**

Without the consent of a shareholders' meeting, a director must not undertake commercial transactions of the same nature as and competing with those of the company, either on his or her own account or that of a third person. A director must also not be a partner with unlimited liability in a partnership carrying on business of

the same nature as and competing with that of the company.

A director who has an interest in any matter is not allowed to vote on the matter. Failure to abide by this restriction does not render the resolution void. However, if the failure causes damage to the company, the company is entitled to claim compensation from the director.

### **Public Limited Company**

To ensure that a director does not have a conflict of interest when carrying out his or her duties, the PLCA provides that a director must not undertake any business of the same nature as and competing with that of the company, whether on his or her own account or on account of a third party. Furthermore, any director who has any interest in a particular matter must not vote on such matter. Also, the director is required to inform the company without any delay if he or she has any direct or indirect interest in any contract made by the company.

Listed companies are required to have at least one-third of their directors as independent directors and a minimum of three independent directors.

An independent director must meet the following requirements. References to "company" in the following paragraphs include references to the parent company, subsidiary, affiliate, major shareholder(s) and controlling parties of the company. The director must:

- hold, together with those shares held by the persons related to him or her, no more than 1% of the total voting shares of the company;
- not currently be or have ever been the company's executive director, worker, employee, consultant receiving salary from the company, or controlling party of the company except when the position terminated at least two

years before the filing with the SEC of the application to offer newly issued shares in the company to the public or the date of appointment (as applicable);

- not be a person related by blood or legal registration as the father, mother, spouse, sibling, or child, or the spouse of the child of another director, executive, major shareholder, controlling person, or person nominated for the position of a director, executive or a controlling person of the company or its subsidiary;
- not have a business relationship with the company in a way that will obstruct his or her independence and not be a significant shareholder or a controlling person of a person having a business relationship with the company unless such status terminated at least two years before the filing with the SEC of the application to offer newly-issued shares in the company to the public or the date of appointment (as applicable);
- not be an auditor of the company and not be a significant shareholder, controlling person, or partner of an audit firm which employs auditors of the company unless the status terminated at least two years before the filing with the SEC of the application to offer newly issued shares in the company to the public or the date of appointment (as applicable);
- not provide nor have provided any professional services, including the provision of services as a legal or financial advisor, receiving service fees over THB2 million per year from the company and not be a significant shareholder, controlling person, or partner of such a professional services provider except where such status terminated at least two years before the filing with the SEC of the application to offer newly issued shares in the company to the public or the date of appointment (as applicable);
- not be a director that has been appointed to act as a representative of the directors of the company, the company's major shareholder(s)

or the company's shareholders who are related to the company's major shareholder;

- not engage in any business of the same nature as and that significantly competes with the business of the company or the company's subsidiary(ies) and not be a significant partner in a partnership or an executive director, employee, staff member, or advisor who receives salary or hold shares in excess of 1% of the total number of shares with voting rights of another company that engages in a business of the same nature as and that significantly competes with the business of the company or the company's subsidiary; and
- not possess any other characteristics that result in his or her inability to express independent opinions on the business operations of the company.

#### **4.6 Legal Duties of Directors/Officers Limited Liability Company**

The CCC prescribes that the board of directors will have the duties and authorities to oversee the management of the company and its business operations in accordance with the AOA and the resolutions of the shareholders' meeting.

In general, directors have to manage the company's business and perform duties as a representative of the company in accordance with the company's objectives and regulations with the diligence of a careful businessperson.

The board of directors may appoint a manager or committee to perform any act according to the orders of the board of directors.

#### **Public Limited Company**

The PLCA prescribes that the board of directors will have duties and authorities to oversee the management of the company and its business operations in accordance with the AOA and the resolutions of the shareholders' meeting.

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The board of directors may appoint one or more director(s) or a third party to perform any act on behalf of the board of directors unless there is a restriction in the AOA that prohibits it to do so.

A director must carry out his or her duties by taking into account the relevant laws, the company's objectives, the AOA and the resolutions of the shareholders' meeting with integrity, honesty and due care for the protection of the company's interests.

For listed companies, the SEA further requires that the directors and the executives of the company must perform their duties with responsibility, due care and loyalty, and must comply with all laws, the objectives and AOA of the company, the resolutions of the board of directors and the resolutions of the shareholders' meetings. Also, a director and executive must act as an ordinary person would act under the same circumstances.

## **4.7 Responsibility/Accountability of Directors**

### **Limited Liability Company**

The directors primarily owe a fiduciary duty to the company.

When the acts of a director have been approved by the shareholders' meeting, the director is no longer liable to the shareholders who have approved them, or to the company.

Shareholders who did not approve of such acts cannot take legal action later than six months after the date of the shareholders' meeting at which such acts were approved.

The directors may also be liable to any third party that has suffered damage arising from a breach of fiduciary duty.

### **Public Limited Company**

The directors owe a fiduciary duty to the company.

## **4.8 Consequences and Enforcement of Breach of Directors' Duties**

### **Limited Liability Company**

The potential sources of liability for breach of duty are as follows.

#### *Civil liability*

Liability to the company: unless the director's acts are approved by the general meeting of the shareholders, the director will be liable to the company if the company suffers damage as a result of any of the director's acts.

Liability to shareholders: if the company has suffered damage as a result of any of the director's acts and the company does not take any legal action for compensation against the director, any single shareholder of the company has the right, on behalf of the company, to file a lawsuit against the director. However, if a shareholders' meeting has approved the act of the director, the director is no longer liable for such act to any shareholder who has approved the act.

Liability to the company's creditors: similarly, if damage has been done to the company as a result of any of the director's acts and the company does not take legal action against the director, any creditor of the company who has suffered damage as the result of any of the director's acts has the right to file a law suit against the director in so far as the creditor's claim against the company remains unsatisfied.

#### *Criminal liability*

If a director breaches the company regulations or acts beyond his or her duty as stated in the company's regulations, and such act is a criminal offence, the company or the shareholders may file a criminal charge against the director. In

the same way, if the act of the director causes injury to any third party, the third party also has the right to take criminal action against the director.

### Public Limited Company

If the director acts or omits to act in a way which causes a breach of his or her duties, the company or the shareholders, as the case may be, may take the following actions.

- If the act or omission causes loss to the company, the company may claim compensation from the director. If the company fails to do so, shareholder(s) holding in aggregate not less than 5% of the total issued shares may submit a written notice requiring the company to claim damages from the director. If the company fails to take the action as required by the shareholder(s), the shareholder(s) is (are) entitled to file a claim with the competent court for damages on behalf of the company.
- Alternatively, if the act or omission threatens to cause loss to the company, shareholder(s) holding an aggregate number of not less than 5% of the total issued shares may petition the court for an order restraining the act of the director.

The directors are jointly liable for any loss caused to the company in certain cases, as follows:

- making payment of remuneration to directors without having approval from the shareholders' meeting or not in accordance with the AOA;
- making payment of dividends to shareholders other than from profits, or without receiving approval from the shareholders' meeting or board of directors' meeting (in the case of an interim dividend); or
- failing to prepare or keep books, registers or documents of the company.

The directors are also jointly liable for any loss caused to shareholders or persons connected with the company in certain cases, unless it is proved that they had no part in such culpable act. Such acts are:

- making a representation of any fact that is false or concealing any fact which should be revealed in relation to the financial standing and business operations of the company in any offer for sale of shares, debentures or financial instruments of the company;
- making a representation of any fact or making an entry of particulars in a document filed with the registrar containing a falsehood or a discrepancy with the company's accounts, registers or documents; or
- preparing a balance-sheet, a profit and loss account, minutes of a shareholders' meeting or minutes of a board of directors' meeting containing a falsehood.

### 4.9 Other Bases for Claims/ Enforcement against Directors/Officers Limited Liability Company

Directors may be held liable personally for non-compliance with the corporate governance requirements prescribed by other laws and regulations, such as the Accounting Act, Revenue Code and Foreign Business Act.

Under the CCC, the liability of a director cannot be limited. In practice, however, a director can be protected against liabilities to the company or shareholders by directors' and officers' liability insurance.

### Public Limited Company

If a director fails to perform his or her duty with due care and causes damage to the company, the director may be subject to claims from the company or shareholders.

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The director may not be liable if it is proved that he or she did not take part in such action or the act was done without reliance on any resolution of a board of directors' meeting or he or she raised an objection at a board of directors' meeting which appears in the minutes of the meeting or he or she submitted a written objection to the chairman within three days after the meeting. In addition, if the shareholders' meeting approves or ratifies the act carried out by the director, such director will not be liable for such act to the company, shareholders or creditors of the company.

#### **4.10 Approvals and Restrictions Concerning Payments to Directors/Officers**

##### **Limited Liability Company**

The remuneration of a director must be approved by the shareholders' meeting.

##### **Public Limited Company**

The PLCA prescribes that a director is entitled to remuneration as specified in the AOA. Apart from such remuneration, the company is prohibited to pay any other benefits to the director.

If the AOA does not prescribe the director's remuneration, the director's remuneration must be determined by a resolution of the shareholders' meeting of at least two-thirds of the total number of votes of the shareholders attending the meeting.

#### **4.11 Disclosure of Payments to Directors/Officers**

##### **Limited Liability Company**

The remuneration of a director is not required to be disclosed.

##### **Public Limited Company**

According to the PLCA, the board of directors is required to disclose information on remuneration, shares, debentures or any other rights and

benefits received by directors from the company in the annual report.

Listed companies are required to disclose the remuneration of the directors (both monetary and non-monetary) in the annual registration statement (Form 56-1) and the annual report in the form required by the Capital Market Supervisory Board.

## **5. SHAREHOLDERS**

### **5.1 Relationship between Companies and Shareholders**

#### **Limited Liability Company**

A company, upon incorporation registration in accordance with the provisions of the CCC, constitutes a juristic person distinct from its shareholders.

The shareholders may influence the direction of a company through nomination and appointment of directors who will carry on the day-to-day operations of the company and owe fiduciary duties to the company. The shareholders do not owe any fiduciary duty in relation to the operations of the company but they are liable for any amount remaining to be paid up on the shares they are holding, as it is possible to have partly paid shares under the CCC. Shares must be paid up in cash and shareholders cannot set off any amount against the liability to pay up shares.

#### **Public Limited Company**

Under the PLCA, a public company is owned by the shareholders through the holding of the company's shares. The shareholders, regardless of the number of owned shares, have basic rights in relation to the company under the PLCA and other relevant laws including:

- right to receive dividends;

- right to attend and cast votes at a shareholders' meeting;
- right to receive information about the company;
- right to monitor the performance of the directors; and
- right to file a petition to the court for an order restraining the acts of any director.

## 5.2 Role of Shareholders in Company Management

### Limited Liability Company

The shareholders may influence the direction of a company through the nomination and appointment of directors. Further, in the case where the board of directors considers a significant transaction or a transaction requires the approval of the shareholders' meeting as it exceeds the board's authority as stated in the constitutional documents of the company, the board of directors must seek approval from the shareholders' meeting.

Certain decisions are exclusively entrusted to the shareholders' meeting by the CCC – eg, amendment to the MOA or Articles of Association and increase or reduction in the registered capital.

### Public Limited Company

Under the PLCA, the shareholders are not directly involved in company management. Rather, the shareholders appoint the board of directors to consider and approve any material business decision and oversee the company management on their behalf.

The company management requires the involvement of the shareholders through the resolution of a shareholders' meeting prior to certain actions. That is, the PLCA requires the public company to obtain shareholders' approval prior to carrying out certain material matters such as a capital increase or reduction, the amendment

of the MOA or AOA, the appointment of auditors and the payment of a dividend.

Listed companies may, depending on the size of the transaction, also need shareholders' approval under the relevant regulations of the SET and the Capital Market Supervisory Board prior to entering into transactions involving the acquisition or disposal of assets and/or connected party transactions.

## 5.3 Shareholder Meetings

### Limited Liability Company

An annual general meeting of shareholders must be held at least once every 12 months. Any other shareholders' meeting is called an extraordinary general meeting.

The key rules for holding and conducting a shareholders' meeting in accordance with the CCC are set out below:

- the board of directors must issue a notice calling the shareholders' meeting which must be advertised in a local newspaper, and delivered to every shareholder at least seven days prior to the date of the meeting, except in the case where the notice is calling a shareholders' meeting to pass a special resolution, when the notice must be issued at least 14 days prior to the date of the meeting; if the shareholders' meeting is to be held electronically, the notice calling for the meeting and related documents can be delivered electronically instead of by post;
- the quorum is constituted when shareholders representing at least one-fourth of the registered capital of the company are present whether in person or by proxy; the quorum must be present throughout the meeting;
- every shareholder has the right to attend any shareholders' meeting;

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- a shareholder who has not paid a call on his or her shares as demanded by the company will be barred from voting;
- a shareholder who has a special interest in any matter on which a resolution is to be passed at a shareholders' meeting is barred from voting on the matter;
- depending on the subject matter of the resolution, it may be passed by not less than three-fourths of the total votes of the shareholders present at the meeting and entitled to vote (ie, a special resolution), or by the affirmative vote of a simple majority; and
- the chairman of the meeting will have a casting vote in the case a vote produces a tie.

## Public Limited Company

### *Type of shareholder meetings*

Under the PLCA, the board of directors must convene an annual general meeting every year and within four months from the date on which the financial year of the company ends.

Any shareholders' meeting apart from the annual general meeting will be an extraordinary meeting of the shareholders (EGM). An EGM is convened by either of the following.

- The board of directors, whenever it deems appropriate.
- Shareholders holding shares in aggregate not less than 10% of the total number of issued shares, who may jointly submit a written request to the board of directors to convene an EGM. In such case, the board of directors is required to convene the EGM within 45 days from the date of receiving the written request and if the board of directors fails to convene the EGM within this period, the shareholders may themselves convene the EGM within 45 days from the date the board of directors fails to do so.

### *Invitation to shareholders' meetings*

According to the PLCA, the company must deliver the invitation to the shareholders' meeting to the shareholders and the registrar at least seven days prior to the meeting date. Also, the company is required to publish the invitation in a newspaper no less than three days before the meeting date. If the shareholders' meeting will be conducted electronically, the invitation to the meeting can be sent to the shareholders by electronically.

Each invitation must include the place, date, time, agenda of the meeting and the matters to be proposed to the meeting in reasonable detail by indicating whether a matter proposed is for information, approval or consideration. The invitation to the shareholders' meeting must be accompanied by an opinion from the board of directors with respect to such matters.

In addition, for listed companies, if the board of directors passes a resolution fixing the date and agenda of an annual or extraordinary general meeting and the date of determining the list of shareholders who are entitled to attend the annual or extraordinary general meeting, the company is required to notify the SET accordingly on the same day as the date on which the board of directors passes the resolution or by 9am on the following business day at the latest.

### *Quorum*

Quorum for the shareholders' meeting (whether physical or electronic) is constituted by the presence, either in person or by proxy, of not less than 25 shareholders or not less than one-half of the total number of shareholders, holding in aggregate not less than one-third of the total number of issued shares.

### *Voting rights*

A resolution can be adopted at the shareholders' meeting (whether physical or electronic) by a

simple majority of the votes cast by shareholders attending the meeting and casting votes except in certain cases, which require at least three-fourths of all votes represented and entitled to vote, of which the following are examples:

- sale or transfer of all or a substantial part of the business of the company to other persons;
- purchase or acceptance of the transfer of the business of other public companies or private companies; and
- entry into, amendment or termination of contracts relating to the leasing out of all or a substantial part of the business of the company, assignment of any other persons to manage the business or consolidation of the business with that of other persons with the objective of sharing profits and losses.

However, a shareholder with an interest in any agenda item proposed to the shareholders' meeting cannot exercise his or her vote on such matter.

For listed companies, an acquisition or disposal of assets or a connected party transaction may also require approval by three-fourths of the total votes cast by the shareholders attending the meeting and being entitled to vote, without counting the votes of shareholders with an interest.

## 5.4 Shareholder Claims

### Limited Liability Company

If the company has suffered damage as a result of any action of a director and the company does not take any legal action for compensation against the director, any single shareholder of the company has the right, on behalf of the company, to file a lawsuit against the director. However, if a shareholders' meeting has approved the act of the director, the director is no longer

liable for such act to the company or any shareholder who has approved the act.

### Public Limited Company

If a director acts or omits to act in a way that causes damage to the company, shareholder(s) holding an aggregate number of not less than 5% of the total issued shares may submit a written notice requiring the company to claim damages from the director. If the company fails to do so, the shareholder(s) is entitled to file a claim with the competent court for damages on behalf of the company.

In addition, if the director acts or omits to act in a way that threatens to cause loss to the company, shareholder(s) holding shares in an aggregate number of not less than 5% of the total issued shares may file a petition to the court for an order restraining the act of the director.

Also, for listed companies, a shareholder who suffers damage has the right to claim damages from a director or executive of the company if the director or executive discloses false information or conceals information that should be disclosed to the shareholders.

## 5.5 Disclosure by Shareholders in Publicly Traded Companies

A shareholder, by his or her own act or acting in concert with others, who acquires or disposes of shares so that his or her holding, together with those held by its related persons and its concert parties and their related persons, reaches or passes 5% or a multiple of 5% of the voting rights in a listed company is required to publicly disclose such acquisition or disposal. The shareholder is required to submit a report of the acquisition or disposal to the Office of the SEC.

A director, manager, person who holds a management position and auditor of a listed company must report details of holding of the securities

(debt or equity) issued by the listed company, any securities issued by a third party giving the right to acquire securities in the listed company or whose returns depend on such securities, and any derivatives deriving value from such securities that are traded on a market, and any change (no matter how small) in any such holding of securities or derivatives, held by himself or herself, his or her spouse, cohabitee or minor child and any entity in which he or she or any of the other persons mentioned owns more than 30% of the shares with voting rights.

Also, if the acquisition of shares results in the shareholding of the shareholder and persons with whom the shareholder is acting in concert and their related persons to reach or exceed 25%, 50% or 75% of the voting rights of the listed company, the shareholder is required to make a tender offer for all securities of the publicly traded company and publicly disclose information via the Office of the SEC and the SET.

For these purposes, related persons include the spouse and minor children of the shareholder, legal entities in which the shareholder, directly or indirectly, owns shares with more than 30% of the total voting rights and (if the shareholder is a company) any individual or legal entity who or which, directly or indirectly, owns shares with more than 30% of the voting rights in the shareholder.

## 6. CORPORATE REPORTING AND OTHER DISCLOSURES

### 6.1 Financial Reporting Limited Liability Company

For a limited liability company, the directors are responsible for arranging the annual general meeting of shareholders to approve audited financial statements within four months after

the end of the fiscal year, and filing the audited financial statements with the MOC no later than one month after the date of the shareholders' meeting.

### Public Limited Company

Each year, the public company is required to submit its financial statements which have been audited by the auditors and approved by the shareholders at the annual general meeting to the MOC, within one month from the date of the shareholders' meeting.

Listed companies are required to prepare and submit to the SET and the Office of the SEC financial statements that have been reviewed by the auditors within 45 days from the last day of each quarter.

Listed companies may choose to submit or not to submit reviewed financial statements for the fourth quarter. If a listed company chooses to submit fourth-quarter reviewed financial statements it is required to submit audited annual financial statements to the SET and the Office of the SEC within three months from the last day of the financial year. If it chooses not to submit fourth-quarter reviewed financial statements, the audited annual financial statements must be submitted to the authorities within two months from the last day of the financial year.

### 6.2 Disclosure of Corporate Governance Arrangements

The disclosure of corporate governance arrangements is necessary for listed companies. In principle, the implementation of the CG Code is on an "apply or explain" basis whereby the board of directors is encouraged to apply each principle by means that are suitable for the company's business. In this regard, the CG Code encourages the board of directors to conduct and record an annual internal review of the implementation of the CG Code.

Also, since 2018, listed companies are required to disclose in their annual registration statement (Form 56-1) and annual report an acknowledgement of the board of directors that it has considered and reviewed the CG Code by means that are suitable to the company's business. The disclosure must include matters where the company does not comply or has not yet complied with any principle and the rationale for the non-compliance.

### 6.3 Companies Registry Filings

#### Limited Liability Company

Among other things, the following matters and changes to particulars of the company must be filed with the registrar of the MOC:

- incorporation;
- increase or reduction of capital;
- amendment to name, registered address, business objectives and AOA;
- change of directors and the directors authorised to bind the company;
- audited annual financial statements; and
- dissolution and liquidation.

The registered matters are available publicly and the records can be requested from the Department of Business Development.

#### Public Limited Company

To incorporate a public limited company, the promoter is required to file an application together with supporting documents with the MOC.

Once the public limited company is incorporated and operating, there are certain matters that must be filed with the above-mentioned authorities, including:

- changing of the company's name and address;
- amendment of the MOA and AOA;

- increase or reduction of registered capital or change in issued capital;
- changing of directors;
- audited annual financial statements; and
- winding up and liquidation.

The information in respect of filing is publicly available at [datawarehouse.dbd.go.th](http://datawarehouse.dbd.go.th).

## 7. AUDIT, RISK AND INTERNAL CONTROLS

### 7.1 Appointment of External Auditors

#### Limited Liability Company

Under the CCC, an auditor must be appointed at the annual general meeting of shareholders each year. In this regard, a shareholder of a company may be appointed as the company's auditor. However, no person having interest in any business conducted by the company, apart from being the company's shareholder, may be appointed as an auditor of the company and any person who holds a position as director, representative or employee of the company is barred from being appointed as the company's auditor. Generally, external licensed auditors are hired by limited liability companies. The amount of the auditor's remuneration is determined by an annual general meeting of the shareholders.

#### Public Limited Company

Under the PLCA, the auditor of the public limited company must not be a director, employee, member of staff or any person who holds a position in the company. The auditor is appointed every year by a resolution of the shareholders at the annual general meeting. Also, the auditor may be re-elected.

For listed companies, if the company appoints the same auditor for seven financial years, whether consecutive or not, the company is required to change its auditor and the former

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auditor may be re-elected after five consecutive financial years have passed.

## **7.2 Requirements for Directors Concerning Management Risk and Internal Controls**

### **Limited Liability Company**

There is no specific requirement in relation to the management of risk and internal controls under the CCC.

### **Public Limited Company**

There is no specific requirement in relation to the management of risk and internal controls under the PLCA.

For a listed company to maintain its listed status, however, it must ensure that it has an internal control system in place as required by the relevant notification of the Capital Market Supervisory Committee. Also, the Office of the SEC requires that the board of directors must focus on the efficiency of the internal control system and procure the reviewing of such system annually. A listed company is required to disclose in its annual registration statement (Form 56-1) and annual report on the supervision of the sufficiency of the internal control system of the company.

In the same way, the CG Code encourages the board of directors to ensure that the company has effective and appropriate risk management and internal control systems that are aligned with the company's objectives, goals and strategies and comply with applicable laws and standards. Under the CG Code, the board of directors should be aware of and understand the nature and scope of the company's principal and substantial risks and should approve the risk appetite of the company. The material risks the board of directors should focus on may include strategic risk, operational risk, financial risk and compliance risk. Also, the board of directors should regularly monitor the effectiveness of the company's risk management.

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**Weerawong C&P** is an independent Thai law firm established on 1 January 2009. Formerly the Bangkok office of White & Case LLP, which commenced business in Thailand in 1993, it is now one of Thailand's largest independent law firms, with a team of 12 partners and more than 100 lawyers. Services are provided in Thai, English and Chinese. Weerawong C&P is dedicated

to helping its Thai and international clients explore the rich business opportunities in Thailand, South-East Asia and around the world, and the firm provides sensible, solutions-based advice. It is known for its deal-structuring, problem-solving skills and its focus on commercial solutions.

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