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# Thailand

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI Ratings about 18 companies in Thailand as of 31 August 2012.*

Shareowner rights protections in Thailand are strong in some aspects and weak in others. Shareowner rights are specified in the Public Limited Companies Act of 1992 (PCA) and the Securities and Exchange Act of 1992 (SEA). All companies adhere to the one share, one vote rule, and proxy voting is not subject to burdensome restrictions. Investors can easily participate in the election of directors but rarely have access to cumulative voting. The PCA supports cumulative voting but does not enforce mandatory implementation. Some companies have adopted cumulative voting, although it is voluntary.

There is no active market for corporate control in Thailand. Takeovers are rare, and takeover defenses are not especially common. Because of the prevailing ownership structure, shareowner engagement is not common in Thailand. However, there are ongoing improvements to shareholders' engagement as seen in initiatives from institutional investors and the Thai Investors Association (TIA).

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
What is the average percentage of independent directors on public company boards?	53%	All listed companies are required to have independent directors constituting at least one-third of the board.
What percentage of companies have fully independent audit committees?	100%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	33.3%	Many Thai companies are managed by families, and family ownership is usually significant.
Is voting by proxy permitted?	Yes	Proxy voting is permitted only in person. Proxy voting by mail is prohibited.
Must shares be deposited or blocked from trading in order to vote?	No	There is no requirement to deposit or block shares in covered companies. Generally, there are no onerous restrictions on proxy voting.

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
Are there share ownership limitations in this market?	Yes, sometimes	Share ownership limitations are typically placed on a percentage of shares held by foreigners.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	Yes, sometimes	Generally, all shareholders are entitled to attend and vote at the statutory meeting, except when they are interested parties to a transaction (i.e., where there is a conflict of interest).
Do companies adhere to a majority voting standard in the election of directors?	Yes	The PCA stipulates voting procedures for the election of any director through cumulative voting, but the PCA also allows companies to opt out if prescribed in the articles of association.
Do companies allow for cumulative voting in the election of directors?	Yes	Cumulative voting is seldom used by listed companies. In 2010, there were only three listed companies that used cumulative voting.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	Yes	Shareowners are able to approve the remuneration reports at each annual general meeting (AGM). The vote is nonbinding.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Under the SEA, a shareholder or a group of shareholders holding shares amounting to at least 5% of the total voting rights may submit to a company's board a proposal to place items on the agenda of the shareholders' meeting.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	
What percentage of companies include golden shares in their capital structure?	0%	Golden shares are not allowed in Thailand.

(continued)

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Takeover defenses are rarely used in Thailand. Ownership structures (majority ownership, cross-shareholdings) tend to serve as the primary takeover defense.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	Required by law
Do companies require a supermajority vote to approve a merger?	Yes	Required by law, with a 75% threshold
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	No	The offering price must comply with tender-offer requirements specified in the SEC's notification. The main principles are as follows: The form of the offering price should be the same for similar types of securities; the form of the offering can have more than one option but must include a cash purchase as one option; if the offering price is not for cash, a financial adviser must appraise the price; and the offering price must not be less than the offerer's (or a related person's) highest buying price within the 90-day period prior to the date the tender offer was submitted to the SEC.
Are class action suits commonly used in this market?	No	The ability to file class action suits has been under consideration. A class action law has been approved by the cabinet and will be proposed to the parliament for consideration.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are derivative suits commonly used in this market?	No	Theoretically, they are allowed, but they are rarely used in practice. Section 85 of the PCA provides shareowners who represent at least 5% of the total number of voting rights of the company the right to bring a derivative suit against directors or executives on behalf of the company. In addition, in order to encourage the derivative suits, Section 89/18-19 of the amended SEA stipulates that the court shall be empowered to order the company to compensate the shareowners for actual expenses as the court sees fit.

## Current Engagement Practices and Shareowner Rights Developments

Thai law grants all shareowners the same legal rights. In some sense, however, these rights have been weakened by both the concentration of corporate ownership and the diffuse nature of the investor base. Because the majority of Thai companies are owned and managed by families, shares of most companies are effectively tied up in family holdings. The prevalence of cross-shareholdings and economic groups consisting of suppliers, customers, or other related companies virtually eliminates the threat of takeover and thus is a significant roadblock to shareowner engagement. On the investor side, equity ownership is spread among retail investors—many of whom purchased securities speculatively rather than as a long-term ownership interest. Unlike in some developed markets, institutional investors in Thailand have historically had little influence. As a result, organization of minority shareowners around a common issue has been rare. These factors have largely contributed to a general lack of shareowner engagement in Thailand. However, the voice of shareowners has been growing; such entities as the TIA and such institutional shareowners as the Government Pension Fund and the Association of Investment Management Companies (AIMC) have begun to play a larger role. For example, both domestic and foreign institutional investors who are members of the AIMC are now obliged by the Securities and Exchange Commission (SEC) of Thailand to vote at AGMs. And under SEC/AIMC rules, these investors are also required to attend annual meetings and vote against resolutions that breach the individual AIMC members' voting policies. The AIMC has gathered and published all its members' voting policies and voting records on its website.

On the retail investor side, TIA participates actively in AGMs and carries out an assessment of the conduct of annual meetings. TIA also encourages retail shareholders to attend, ask pertinent questions, and vote.

Although Thailand has made significant progress in improving its corporate governance over the past decade, the strengthening of certain shareowner rights has been slow to occur. Legislation to allow class action lawsuits has been under consideration for a number of years. Additionally, although shareowners may participate in the AGM, it is difficult for minority shareowners to propose additional agenda items on the proxy. Legislation to address these issues is currently under consideration, but the process has been slow and the outcome is uncertain.

Some successful changes came from the Securities and Exchange Act (No. 4), a 2008 amendment of the original SEA. The changes increased investor protection and corporate transparency and addressed concerns over conflicts of interest at the director/management level. The following are examples of these changes:

- Shareowners are entitled to file, on behalf of the company, a claim to retrieve benefits obtained by company directors or management in bad faith. The shareowners shall also have the right to receive reasonable litigation expenses from the company as ordered by the court because they act for the benefit of the company as a whole.
- Shareowners are entitled to jointly submit to the board of directors a proposal to include agenda items at the shareowners' meeting, which is a channel for investors to participate in the business of the company. However, the board of directors is permitted to reject the proposal under pre-identified specific conditions or circumstances.
- Investors are entitled to access sufficient information for their decision making in such forms as a shareholders' meeting notice, a proxy solicitation, and additional rules governing information disclosure and shareholders' voting on significant transactions.
- Directors and management of companies in the capital market shall be provided with a clearer scope of duties and liabilities. Those who perform their duties in good faith and with care to preserve their companies' interests shall be properly protected by law, whereas persons with inappropriate characteristics (e.g., those who are bankrupt, incompetent exploiters of investors' interests, and persons with criminal complaints filed against them or who are sentenced to imprisonment) shall be prohibited from becoming directors of or managing such companies.

In addition, the SEC also proposed a class action bill that would enable shareowners and investors to more conveniently and cost-effectively pursue lawsuits against directors for breaches of duties. The draft bill was approved by the cabinet and will be proposed to the parliament for consideration. Because most company boards are selected by controlling shareowners, minority shareowners have limited influence. Furthermore, shareowner proposals are a somewhat new concept in Thailand, and for the most part, shareowners seldom attend annual meetings. However, the 2010 AGM assessment project, involving the SEC, the TIA, and the Thai Listed Companies Association (TLCA), showed that approximately 60% of listed companies provided rights for shareowners to propose agenda items or nominate directors.

The TIA, with the help of the Stock Exchange of Thailand (SET), has been actively helping investors become more aware of their rights. Today, the SET and TIA work together in holding seminars to educate shareowners about the importance of protecting their investments. The SET has supported the TIA in promoting an understanding of shareowners' rights via numerous media channels. The SET and TIA have also emphasized cooperation with companies in acquiring and disseminating information relating to specific lawsuits brought by shareowners against listed companies.

Besides promoting the investor advocate role of the TIA in proxy voting and representing minority shareowners in the exercise of their rights, the SEC has launched an investor education website ([www.sec.or.th/education](http://www.sec.or.th/education)) to provide a pool of fundamental knowledge and essential information for investors. The website covers basic information on all types of capital market investment vehicles, investment planning tips, decision-making guidelines, investors' rights, investor alerts, self-protection from fraud and malpractice, and SEC contact channels for inquiries, advice, complaints, or tips regarding unfair or irregular activities in the market.

In recent cases, the TIA has targeted collective action against individual companies because of specific governance issues. For example, in 2009, the TIA assisted affected shareowners in pressing claims for losses incurred from a massive internal fraud scandal at luxury car importer SEC Auto Sales and Services PCL.

## Legal and Regulatory Framework

The principal basis for shareowner rights was created under the PCA. Issuance of capital market regulations and enforcement and oversight of such regulations are handled by two separate bodies: the SEC and the SET.

The SET was established under the Securities Exchange of Thailand Act of 1974. It operates under the legal framework set forth in the SEA, which also established the SEC. The combined authority of both agencies grants full regulatory oversight of the Thai capital market. The SEC oversees the primary market, and the SET oversees the secondary market.

The PCA established fundamental shareowner rights, which were further defined and reinforced by the amended SEA and the SET regulations for listed companies. The PCA requires the board of directors to hold a general shareowner meeting annually within four months of the end of an accounting period, and the meeting must be held in the province where the headquarters of the company is located unless stated otherwise in the company's articles of association. The PCA also sets the threshold requirements for calling an extraordinary general meeting. The law requires the meeting notice to contain adequate information, such as the time and place of the meeting, the agenda, and the opinions of the board for each matter on the agenda. The PCA describes the mechanisms for proxy voting and allows for either majority or cumulative voting in the election of directors (as specified in a company's articles of association). Under the law, directors are responsible to the company and shareowners and can be held liable for their actions. Additional shareowner rights may be specified in individual company articles of incorporation, as long as such rights meet the minimum standards set forth by the PCA and the amended SEA.

The one share, one vote system is standard for Thai companies. Although there are no restrictions on proxy voting, voting by mail or by means other than attending the AGM is not permitted. Cumulative voting is allowed, but very few companies under their own discretion grant this right to shareowners. Calling an extraordinary meeting requires a request from 20% of issued shares or 25 persons holding at least 10% of the issued shares. The right to include a shareowner proposal on the AGM agenda requires one-third of issued shares. Under the PCA, directors are elected in a staggered structure, with each class of directors serving terms of three years. A 75% supermajority vote is required to remove a director. Combined with the fact that boards are generally subordinate to controlling shareowner interests, these limitations make engagement by threat of board changes highly unlikely.

Engagement via legal action provides some recourse for shareowners. Shareowners have the ability to bring derivative lawsuits; such action requires voting rights of 5% of total shares. Additionally, shareowners (either individually or jointly) who meet the same 5% threshold can file a claim on behalf of the company to retrieve compensation or benefits wrongly attained by executives or directors. Shareowners may also bring civil action on their own behalf to claim compensation or damages from directors or executives who disclose false information or fail to disclose material facts that require disclosure. To encourage derivative

suits, the amended SEA empowers the court to order the company to compensate shareowners for actual derivative suit expenses as the court sees fit. As noted, a mechanism for class action lawsuits has been proposed to the parliament for consideration.

The SET continues to promote good corporate governance by listed companies. In 2006, the SET revised its 15 corporate governance principles to reflect the best practices of the Organisation for Economic Co-Operation and Development (OECD) and the World Bank. The principles are divided into five categories, with each category including recommended best practices: (1) rights of shareowners, (2) equitable treatment of shareowners, (3) role of stakeholders, (4) disclosure and transparency, and (5) responsibilities of the board. Additionally, the SEC and the SET issued several regulations, including the following:

- At least one-third of listed company board members must be independent directors, and the audit committee must be composed of at least three members, all of whom must be independent directors. Audit committee duties include reviewing the reliability of financial statements, commenting on whether proposed connected transactions are fair and in the best interest of the company, and reviewing the sufficiency of the internal control system.
- Connected substantial transactions must be approved by shareowners and disclosed in the annual report.
- All listed companies have to submit quarterly financial statements; annual statements must be audited by accredited auditors.
- To encourage companies to follow corporate governance guidelines, listed companies are required to disclose in their annual reports whether they comply with the Principles of Good Corporate Governance for Listed Companies. Any non-compliance has to be thoroughly explained; that is, this requirement is based on a “comply or explain” model.

## Key organizations with information relevant to shareowner rights in Thailand include the following:

Ministry of Commerce ([www.moc.go.th](http://www.moc.go.th))

Securities and Exchange Commission ([www.sec.or.th](http://www.sec.or.th))

Stock Exchange of Thailand ([www.set.or.th](http://www.set.or.th))



Thai Investors Association ([www.thaiinvestors.com](http://www.thaiinvestors.com))

Thai Institute of Directors Association ([www.thai-iod.com](http://www.thai-iod.com))

Thai Rating and Information Service ([www.tris.co.th](http://www.tris.co.th))

Thai Chamber of Commerce ([www.thaichamber.org/spdefault.asp](http://www.thaichamber.org/spdefault.asp))

Thai Trust Funds ([www.tsd.co.th](http://www.tsd.co.th))

Thai Bankers' Association ([www.tba.or.th](http://www.tba.or.th))

Institute of Internal Auditors of Thailand ([www.theiiat.or.th](http://www.theiiat.or.th))

Federation of Thai Capital Market Organizations ([www.fetco.or.th](http://www.fetco.or.th))

Association of Investment Management Companies ([www.aimc.or.th](http://www.aimc.or.th))

Association of Securities Companies ([www.asco.or.th](http://www.asco.or.th))

Securities Analysts Association ([www.saa-thai.org](http://www.saa-thai.org))