

# Thailand

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI on 13 companies as of 15 May 2010.*

The strength of shareowner rights protections in Thailand is mixed. Such rights are specified in the Public Company Act (PCA) and Securities and Exchange Act (SEA) as amended in Thailand. All companies adhere to the one-vote-per-share rule, and proxy voting is not subject to burdensome restrictions. Investors can easily participate in the election of directors, although they rarely have access to cumulative voting. The PCA supports cumulative voting, but it does not enforce mandatory implementation. Some companies, however, have adopted cumulative voting on a voluntary basis.

There is no active market for corporate control in Thailand. Takeovers are rare, and takeover defenses are not especially common. Because of ownership structures, shareowner engagement is not common in Thailand. Improvements in shareowner engagement are occurring, however, as seen in initiatives of institutional investors and the Thai Investors Association.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent directors at public company boards (% independent board members)?	43%	All listed companies are required to have independent directors composing at least one-third of the board size.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	46%	Related-party transactions tend to be with parent companies.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	15%	Most Thai companies are family managed, and family ownership is usually significant. The 13 companies in this sample are some of the largest in Thailand and not necessarily representative of family ownership in the market. Cross-shareholdings among companies are common. The Stock Exchange of Thailand requires listed companies to have a free float of at least 15% of paid-up capital.
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	No requirement exists to deposit or block shares in companies covered. Generally, there are no onerous restrictions on proxy voting.
Are there share ownership limitations in this market?	Sometimes, yes	Limitations are typically placed on percentage of shares held by foreigners.

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Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	Sometimes, yes	Generally, all shareowners are entitled to attend and vote at the statutory meeting (i.e., annual general meeting), except when the shareowner is an interested (or conflicted) party to a transaction.
Do companies adhere to a majority voting standard in the election of board members?	Yes	Almost all listed companies require majority voting.
Do companies allow for cumulative voting in the election of board members?	Yes	Cumulative voting is seldom used by listed companies. In 2010, only three listed companies 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	According to regulations of the Thai Securities and Exchange Commission (SEC), an employee stock option plan must be approved by the shareowners with support of not less than three-fourths of the total votes of shareowners present; votes against the plan should not be more than 5–10% of the total votes of shareowners present.
Are shareowners able to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Under the SEA as amended, a shareowner or a group of shareowners holding shares amounting to at least 5% of the total voting rights of the company may submit to the board a proposal to place items on the agenda of the AGM.
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 by 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.
Are shareholder rights plans (poison pills) allowed in this market?	No	Takeover defenses are rarely used in Thailand. Ownership structures (majority ownership, cross-shareholdings) tend to serve as the primary takeover defense.

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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. Threshold is 75%.
Are companies subject to a fair price provision, either under applicable law or as stated in their company documents (such as the charter or bylaws)?	No	<p>The offering price must comply with tender-offer requirements specified in the SEC's notification. The following are the main principles:</p> <ul style="list-style-type: none"> <li>• The form of the offering price should be the same for similar types of securities.</li> <li>• The offering may have more than one option but must include a cash purchase as at least one option.</li> <li>• If the offering price is not for cash, a financial adviser must appraise the price.</li> <li>• The offering price must not be less than the offeror's (or related persons') highest buying price within the 90-day period prior to the date on which the tender offer is submitted to the SEC.</li> </ul>
Are class action suits commonly used in this market?	No	The ability to file class action suits is under consideration. Currently, a law allowing such lawsuits has been approved by the Thai cabinet, and it will be proposed to the parliament for consideration.
Are derivative suits commonly used in this market?	No	Theoretically, such suits may occur, but this approach is rarely used in practice. Section 85 of the PCA provides that shareowners who hold shares and have the right to vote amounting to not less than 5% of the total number of voting rights of the company have the right to bring a derivative suit against directors/executives for and on behalf of the company. In addition, to encourage derivative suits, Section 89/18-19 of the amended SEA (No. 4) 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 of a class of stock the same legal rights. In some sense, these rights have been weakened, however, by the concentration of corporate ownership and the diffuse nature of the investor base. Because the majority of Thai companies are family owned and managed, 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 historically purchased securities speculatively rather than as a long-term ownership interest. And unlike the situation in some developed markets, institutional investors have historically had little influence over companies. As a result, organization of minority shareowners around a common issue has been rare. These factors have contributed to a general lack of shareowner engagement in Thailand.

The voice of shareowners has been growing, however; entities such as the Thai Investors Association (TIA) and institutional shareowners such as the Government Pension Fund and the Association of Investment Management Companies (AIMC) have begun to play a larger role than in the past. For example, both domestic and foreign institutional investors who are members of the AIMC are now obliged by the SEC to vote at AGMs. And under SEC/AIMC rules, these investors also are required to attend annual meetings and vote against resolutions that breach their voting policies. The AIMC has gathered all members' voting policies and voting records and published them on its website.

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

Although Thailand has made significant progress in improving its corporate governance in the past decade, the strengthening of certain shareowner rights has been slow. 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. Legislation to address these issues is currently under consideration, but the process has been slow and uncertain.

One successful set of changes is the amendment of the Securities and Exchange Act of 1992 in 2008 by the SEA (No. 4). The changes increased investor protection and corporate transparency and addressed concerns over conflicts of interest at the director/manager level. For example:

- Shareowners are entitled to file, on behalf of the company, the claim to disgorge ill-gotten benefits obtained by company directors or managers in bad faith. The shareowners also have the right to recover reasonable litigation expenses from the company as ordered by the court because the shareowners are acting 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 AGM, which is a channel for investors to participate in the business of the company. The board of directors is permitted to reject the proposal, however, under pre-identified specific conditions or circumstances.
- Investors are entitled to access sufficient information for their decision making, in such forms as notice of shareowner meetings, proxy solicitation, and additional rules governing information disclosure and shareowners' voting on significant transactions.

- Directors and managers of companies publicly traded in the capital market are to be provided with a description of their duties and liabilities, and those who perform their duties in good faith and with care to preserve their companies' interest shall be properly protected by law. Persons with inappropriate characteristics—e.g., those who are bankrupt or incompetent, exploiters of investors' interests, and persons with criminal complaints filed against them or sentenced to imprisonment—are prohibited from becoming directors or managers of publicly traded companies.

In addition, the SEC proposed a class action bill that would enable shareowners and investors to pursue lawsuits more conveniently and cost-effectively than in the past against directors for breach of duties. The draft bill was approved by the Thai 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 somewhat of a 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, showed that approximately 60 percent of listed companies provide shareowners the right to propose agenda items and/or directors.

The influence of minority shareowners is changing gradually through active participation by the TIA at annual meetings. In particular, 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 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 has also emphasized cooperation with companies in acquiring and disseminating information relating to specific cases or lawsuits brought by shareowners against a listed company.

In addition to supporting the investor advocate role of the TIA in proxy voting and representing minor 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 frauds and malpractices, and SEC contacts for inquiries, advice, complaints, or reports of unfair, irregular activities in the market.

In recent cases, the TIA has supported 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 at luxury car importer S.E.C. Auto Sales and Service PCL.

## Legal and Regulatory Framework

The principal basis for shareowner rights was created by the Public Company Act of 1992. The 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 by the Securities Exchange of Thailand Act of 1974. The exchange operates under the legal framework set forth in the Securities and Exchange Act of 1992 (amended in 2008) as amended, which also established the SEC. The combined authority of both agencies provides them with 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 have been 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. That meeting must be held in the province where the head office 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 (EGM). The law requires the notice of a meeting to contain adequate information, such as the time and place of the meeting, agenda, and 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-vote-per-share 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 few companies grant this right to shareowners. Calling an EGM requires a request by 20 percent of issued shares or 25 persons holding at least 10 percent 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 percent supermajority vote is required to remove a director. Because boards are generally subordinate to controlling shareowner interests, the combination of these limitations makes engagement by threat of board change highly unlikely.

Engagement via legal action provides some recourse for shareowners. Shareowners have the ability to bring derivative lawsuits; such action requires voting rights in aggregate of 5 percent of total shares. Additionally, shareowners, either individually or jointly, with a 5 percent threshold can file a claim on behalf of the company to disgorge 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/managers who disclosed false information or failed to disclose material facts that should be disclosed. To encourage derivative suits, the amended SEA empowers the court to order the company to compensate shareowners for the actual expenses of derivative suits as the court thinks fit. As noted previously, a mechanism for class action lawsuits is in the process for proposal to parliament for consideration.

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

- All listed companies are required to have independent directors composing at least one-third of the board's size and an audit committee composed of at least three members who are all independent directors. The duties of the audit committee are, for example, to review the reliability of financial statements, comment on whether the proposed connected transactions are fair and in the best interest of the company, and review the sufficiency of the internal control system.

- Substantial connected transactions must be approved by shareowners and disclosed in the annual report.
- All listed companies must submit quarterly financial statements, and the annual statement must be audited by accredited auditors; the quarterly statements must be reviewed. (To carry out convergence with International Financial Reporting Standards [IFRS], the Federation of Accounting Professions of Thailand has revised the Thai accounting standards so that they comply with IFRS.)
- To encourage companies to follow CG 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 noncompliance must be thoroughly explained under 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.thaiechamber.com](http://www.thaiechamber.com))

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))