

# Luther.

## Memo: A Guide for Shareholders in Thailand

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# A. Introduction



Shareholders of a company collectively own the company. They are investors of the company who pay money (or contribute assets or labour in some cases) to the company in return for shares in the company. Shareholders set guidelines, but are not directly involved in managing a company, unless they are also directors or the company's articles of association allows them to do so.

This guide summarises key aspects of the *Thai Civil and Commercial Code B.E. 2535 (1992)* and highlights the most important shareholders' rights in Thailand. If you would like to receive further information from us, please let us know. In the meantime, we hope that you will find this guide useful.

## B. Ownership of a company

### I. Role of a shareholder

A private company, which means a limited company formed under the *Thai Civil and Commercial Code B.E. 2535 (1992)*, must have at least three shareholders, which can be either an individual, a corporate entity (e.g. another limited company) or an organisation that owns one or multiple shares in a company.

Apart from the registered par value of each share of at least THB 5, there are no minimum share capital requirements under Thai law, and the shareholding can generally be 100% foreign. However, if a limited company is designated as “foreign”, it may have to meet higher capital requirements and seek permission to carry out certain business activities which are restricted under the *Foreign Business Act B.E. 2542 (1999)*: a foreign-owned limited company must generally have a minimum registered and paid-up capital of THB 2,000,000. If such a company engages in activities restricted under the *Foreign Business Act B.E. 2542 (1999)*, it must even have a minimum capital of THB 3,000,000.

A shareholder can also be a director of a company, but does not need to be one. Directors are responsible for the management of the company (the company’s business). In small companies, it is common for shareholders to be appointed as directors of the company. In larger companies, a director can be independent from the shareholders and does not need to be a shareholder.

A director must act in the best interest of the company, even if this may conflict with their own personal interest. Shareholders, on the other hand, are generally free to act in their own interests. Directors are also subject to various duties under the law, including the duty to disclose material personal interest, not to improperly use position or information and to avoid reckless trading. Shareholders are not subject to any such duties and only required to pay any unpaid amount owing on their shares.

### II. Becoming a shareholder

An individual, a corporate entity or an organisation can become a shareholder of a company in two ways:

- They can subscribe their names to a memorandum to promote and form a limited company and hold share(s) in a limited company. The details (i.e. name, nationality, date of birth and addresses) of all promoters will be listed in the application for registration of the company.<sup>1</sup>
- They can agree to become a shareholder of a registered company by buying shares in the company. The company must disclose to the Department of Business Development (DBD) the details (i.e. shares held, name, nationality, date of birth and addresses) of the new shareholder(s). The company must also notify the DBD if there are any changes to its shareholders.

### III. Share certificates and share register book

#### 1. Share certificates

All shareholders of a limited company must be given a share certificate for their shares held in the company, signed by an authorized director and stamped with the company seal (if any).

The certificate must contain the following information:

- The name of the company;
- The number of the shares to which it applies;
- The amount of each share;
- In case the shares are not fully paid-up, the amount paid on each share; and
- The name of the shareholder or a statement that the certificate is to bearer.<sup>2</sup>

#### 2. Share register book

A limited company is required to keep a share register book at the company’s office, which must contain the following information:

- The name, address and occupation of the shareholders;
- The number, the amount in Thai baht and the paid amount in Thai baht per each share held by the shareholders;
- The date at which a shareholder was registered;

<sup>1</sup> Section 1097. Minimum number of persons required for LC.

<sup>2</sup> Section 1128. Signed and sealed shares.

- The date at which a shareholder ceased to be a shareholder;
- The number and issue date of certificate issued to bearer, and the shares number registered in such certificate; and
- The cancellation date of name certificate and bearer certificate (if any).<sup>3</sup>

#### IV. Responsibilities of a shareholder

As owners of a company, shareholders have certain responsibilities as set out in the *Thai Civil and Commercial Code B.E. 2535 (1992)* and the company's articles of association.

Shareholders of a company own the company, but they do not own the assets of the company, because the company is a separate legal entity and its assets belong to the company. In addition, shareholders are not personally liable for the company's debts and liabilities. A shareholder's only financial obligation is to pay the company any amount unpaid on their shares.

Shares can be fully paid or partially paid (a minimum of at least 25% of the shares must be paid up). A company may set the terms on which its shares are issued and the rights and restrictions attached to the shares. Shareholders should refer to the company's articles of association and the terms of issue of their shares to understand the rights and restrictions attached to their shares.

#### V. Rights of a shareholder

Under the *Thai Civil and Commercial Code B.E. 2535 (1992)*, a company can issue the following types of shares:

- Ordinary shares; and
- Preference shares.

Both types of shares grant the holders different rights (and duties) to the company.

Holders of preference shares have the right to be present at any annual general meeting of the shareholders of the company and may have the same, less or more voting rights than an ordinary shareholder. This depends on the company's articles of association. They are entitled to receive dividends, regardless of whether they paid-up their shares or not before ordinary shareholders when the company has profits. If the company will be dissolved, preference shareholders are entitled to their shares once all the creditors have been paid.

As the issuance of preference shares is optional, but not mandatory, the following section will focus on the rights of ordinary shareholders as provided by the *Thai Civil and Commercial Code B.E. 2535 (1992)* and standard company's articles of association:

##### 1. Right to vote

Shareholders are able to vote on the shares they hold at a general meeting of the company.

Shareholders can make decisions about the company by voting on shareholder resolutions at general meetings of the company. This is one of the most important rights of a shareholder in a company.

##### Shareholder Resolutions

There are two types of shareholder resolutions under the *Thai Civil and Commercial Code B.E. 2535 (1992)*:

- Special resolutions, which must be passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution and who are present at the meeting.
- Ordinary resolutions, which must be passed by a majority (more than 50%) of the votes cast by shareholders entitled to vote on the resolution and who are present at the meeting.

The *Thai Civil and Commercial Code B.E. 2535 (1992)* requires some shareholder decisions to be approved by an ordinary resolution and others to be approved by special resolution (e.g. on capital increase or decrease, amending the articles of association, passing a resolution to place the company in liquidation or to merge the company).

Shareholders generally have the right to cast one vote for every ordinary share they hold at company general meetings. Therefore, the number of shares a shareholder holds determines the level of control they have on the company. For example, if a shareholder holds 750 shares out of a total of 1,000 shares issued by the company, that shareholder controls 75% of the votes at a general meeting of the company.

The shareholders' influence on a resolution is as follows:

- More than 75% of the shares: shareholders have absolute control over all decisions to be made at the shareholders' meetings and may pass ordinary and special resolutions.

<sup>3</sup> Section 1138. Requirements for shareholder register.

- More than 50%, but less than 75%: shareholders have the power to pass an ordinary resolution, but other shareholders' agreement is needed to pass special resolutions.
- More than 25%, but less than 50%: shareholders have the right to require the company to convene an extraordinary meeting and have the power to block special resolutions.
- At least 20% of the shares: shareholders have the right to require the company to convene an extraordinary meeting but cannot influence the decision to be made.
- Less than 20% of the shares: shareholders are not able to require the company to convene a shareholders' meeting and cannot influence the passing of any special resolution or an ordinary resolution.

Different classes of shares may have different rights to vote on shareholder resolutions at general meetings of companies. A company may issue shares with voting rights or without voting rights.

#### *Meetings of shareholder (general meetings)*

General meetings of a company are called to present matters for approval by shareholders (by passing shareholder resolutions).

After the establishment of the company, there are two types of meetings of shareholders under the *Thai Civil and Commercial Code B.E. 2535 (1992)*:

- An annual general meeting (AGM) which must be held once every calendar year.<sup>4</sup> At the AGM, the usual proceedings include election of directors of the company (by the shareholders), consideration and approval of the audited financial statements and other matters, as required by law and as stipulated in the company's articles of association.
- An extraordinary general meeting (EGM) which is any other meeting of the shareholders of a company (other than an AGM) held when an urgent issue has occurred, and the shareholders need to approve any changes.

The directors of a company have the power to call general meetings whenever they think fit.<sup>5</sup>

<sup>4</sup> Section 1171. Annual ordinary meeting. A general meeting of shareholders shall be held within six months after the registration, and shall subsequently be held at least every 12 months. Such meeting is called an ordinary meeting. All other general meetings are called extraordinary meetings.

<sup>5</sup> Section 1172. Extraordinary meetings. They must without delay summon such meeting when the company has lost half the amount of its capital, in order to inform the shareholders of such loss.

Shareholders who hold at least 20% of the issued shares of the company may also request the directors to call and hold a general meeting.<sup>6</sup> Whenever such a requisition is made, the directors shall forthwith summon such meeting. If the meeting is not summoned within 30 days after the date of the requisition, the requisitioner, or any other shareholder amounting to the required number, may themselves summon it.<sup>7</sup>

Shareholders have a right to receive notices of meetings. Notice of the summoning of every general meeting shall be published at least once in a local paper not later than seven days before the date fixed for the meeting, and sent by post with acknowledgement of receipt to every shareholder whose name appears in the register of shareholders not later than seven days or, in case the notice is for a special resolution to be made by the general meeting, 14 days before the date fixed for the meeting. The notice of the summoning of a general meeting shall specify the place, the day and the hour of meeting and the nature of the business to be transacted. In case the notice is for a special resolution to be made in the general meeting, the substance of the proposed resolution shall also be included in the notice.<sup>8</sup>

Every shareholder has the right to be present at any general meeting.<sup>9</sup> Please mind, however, that the right to vote is subject to all calls due by the shareholder have been paid.<sup>10</sup> Further, a shareholder who has a special interest in a particular resolution cannot vote on such resolution.<sup>11</sup>

## 2. Inspection of share register book

Shareholders may inspect the share register book of the company and are entitled to require a copy of such register or of any part thereof to be delivered to them.<sup>12</sup>

## 3. Right to receive dividends

Shareholders have the right to receive any dividend or distribution paid by the company in proportion to the amount paid upon each share being held.<sup>13</sup>

<sup>6</sup> Section 1173. Requirements for shareholder request for an extraordinary meeting.

<sup>7</sup> Section 1174. Meeting required within 30 days of request by shareholders

<sup>8</sup> Section 1175 Notice of general meeting

<sup>9</sup> Section 1176. Shareholder right to attending meetings

<sup>10</sup> Section 1184 No shareholder is entitled to vote unless all calls due by him have been paid.

<sup>11</sup> Section 1185. A shareholder who has in a resolution, a special interest cannot vote on such resolution

<sup>12</sup> Section 1139. Company shareholder registration open for review; Section 1140. Copies of register.

<sup>13</sup> Section 1200. Distribution of dividend.

#### 4. Right to an equal share in any surplus assets

They have the right to an equal share in any surplus assets of the company if the company is wound up (after a company has paid all of its creditors).

Shareholders do not have any right to participate in the management of a company's business or its affairs (for example, filing notice or documents with the DBD), unless the company's articles of association allow them to do so or they are also appointed as directors of the company.

#### 5. Inspection of resolutions and meeting minutes

A company must keep a written record of minutes of all proceedings and resolutions of meetings of shareholders and directors. Shareholders are entitled to inspect such records free of charge.<sup>14</sup>

#### 6. Appointment of inspectors

Shareholders holding not less than one-fifth part of the shares of the company can file an application to the competent Minister to appoint one or more competent inspectors to examine into the affairs of the company.<sup>15</sup>

#### 7. Excuse: Rights and protection of minority shareholders

Minority shareholder rights include:

- To file a motion with the court to cancel any resolution passed at irregular general meetings.
- To receive the notice of the shareholders' meeting not less than seven days in advance or 14 days in advance for a special resolution.
- To request in writing to the board of directors to call for a shareholders' meeting.
- To request the competent officer to appoint an inspector to examine the business of the company.

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<sup>14</sup> Section 1207 paragraph 2: shareholder can demand inspection of the record of minutes of all proceedings and resolutions of meetings of shareholders and directors.

<sup>15</sup> Section 1215: shareholders holding not less than one-fifth part of the shares of the company can file an application to the competent Minister to appoint one or more competent inspectors to examine into the affairs of the company.

## C. Our services

We are able to assist in ensuring full compliance with the *Thai Civil and Commercial Code B.E. 2535 (1992)* and other laws. This includes advice and training on the rights and duties of shareholders of a company to facilitate your daily work and minimise your compliance risks.

We would further be happy to assist with general compliance matters, such as accounting, payroll, corporate secretarial services and tax compliance, as well as general legal and tax advice.

We hope we can be of assistance to you. Should you have any questions, please do not hesitate to contact us.



# Luther in Asia

## Expertise

Our office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the creation of international holding structures and ensuring tax-efficient repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax structures. Our accountants and professionals carry out the time-consuming administrative tasks of accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

## Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters for many international companies operating within the Asia-Pacific region.

With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 26 lawyers from Singapore, Germany, France and other jurisdictions cover the full range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia.

Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

## Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market.

Luther Shanghai is fully authorised to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

## Region

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Ho Chi Minh City (Vietnam), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners in Australia, Hong Kong, Japan, New Zealand, the Philippines and South Korea.

## Hits the mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients. The name "Luther" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.

Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide.



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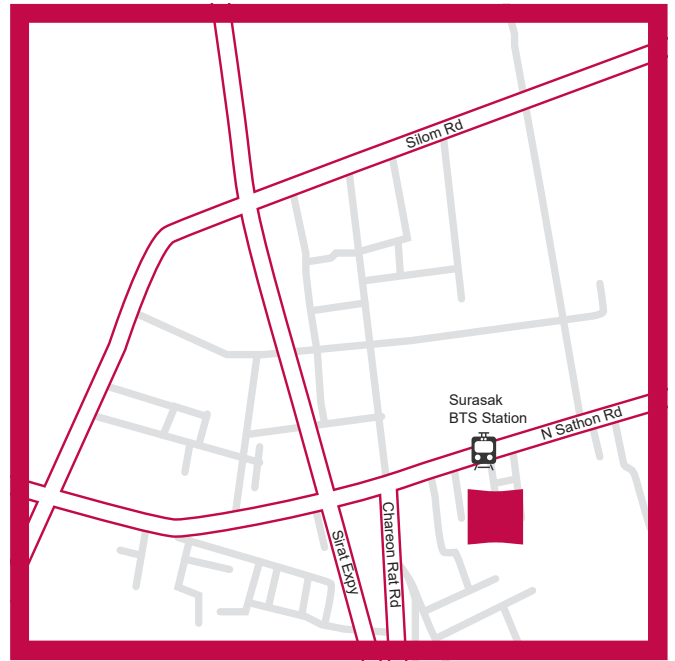
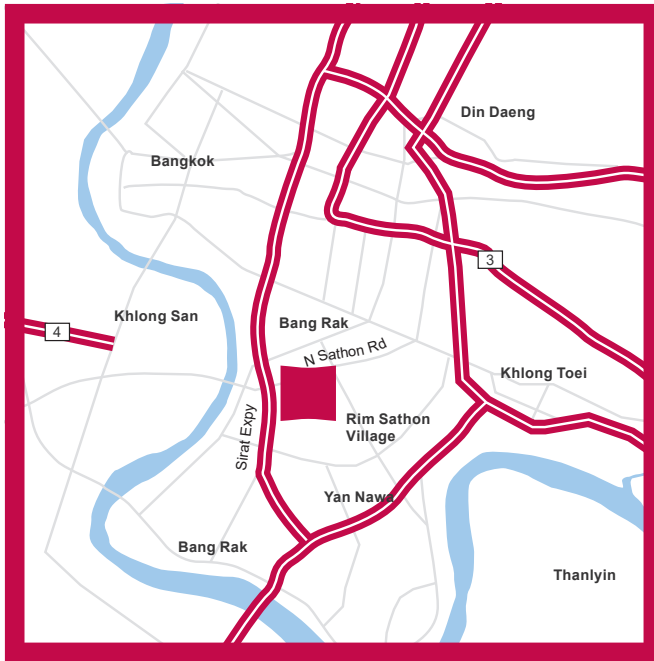
# Our locations

Our and our local partners' offices in important European and Asian markets



The shown locations are either Luther legal or corporate services offices and/or offices of our local cooperation partners.

# Our office in Bangkok



## Our office in Bangkok

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