Shareholders' Rights in Thailand

Corporate Law, Governance Protections, and the Rise of Shareholder Engagement

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Thailand's corporate landscape is determined by two key statutes: the Civil and Commercial Code (CCC), which applies to private limited businesses, and the Public Company Limited Act (PCL Act), which governs public limited corporations and their listed counterparts. Together, these instruments determine not only how firms are formed and operated, but also how shareholders can engage, influence, and seek redress within corporate structures. This article examines every aspect of shareholder rights in Thailand, from the fundamental architecture of share ownership and setting up companies to meeting rights, transfer limits, and dividend entitlements, to the emerging but still modest practice of shareholder activism.

1. Types of Company, Share Classes and Shareholdings

1.1 The Thai Corporate Landscape

Thai law recognizes five types of business organization: the Ordinary Partnership, Registered Ordinary Partnership, Limited Partnership, Private Limited Company, and Public Limited Company. For investors who want to limit liability and maintain a defined ownership structure, the Private Limited Company (Private Co.) and Public Limited Company (Public Co.) are the forms of most practical relevance.

The distinction between these two types carries meaningful legal consequences. A Private Co. is governed by the CCC and operates under a more flexible, less publicly scrutinized regime. A Public Co., governed by the PCL Act, must satisfy considerably more demanding regulatory requirements, a reflection of its capacity to raise capital from the general public. Once a Public Co. lists its shares on the Stock Exchange of Thailand (SET), it becomes a Listed Company (Listed Co.), subject to further oversight by the Securities and Exchange Commission (SEC) and the SET itself.

1.2 Preferred Structures for Foreign Investment

Foreign capital typically enters Thailand through two channels: direct investment through a joint venture entity, and portfolio investment through the purchase of shares in a SET-listed company. Among these, the private limited company structure has emerged as the preferred entry point for operational joint ventures, partly because it accommodates full foreign ownership which is subject to an important qualification.

Thailand's Foreign Business Act B.E. 2542 (1999) (FBA) designates certain business activities as restricted or reserved for Thai nationals. Where a proposed business falls within these

restricted categories, foreign shareholding is ordinarily capped at 49%. Foreign investors wishing to exceed this ceiling must obtain either a Foreign Business License (FBL) or a Foreign Business Certificate (FBC) from the competent Thai authority before proceeding.

1.3 Share Classes and the Rights They Confer

Both the CCC and the PCL Act permit companies to issue two broad categories of shares: ordinary shares and preference shares. Ordinary shareholders enjoy identical rights across the board, each holds an equal claim to voting power, profit distributions, and participation in any other shareholder entitlements. Preference shares, by contrast, are defined by their departure from this parity; their specific rights, whether advantageous or restrictive relative to ordinary shares, are carved out in the company's Articles of Association.

In practice, preference shares are most commonly used to secure priority access to dividends or to capital on a winding-up. A preference shareholder may be entitled to dividends at a fixed predetermined rate payable before any distribution to ordinary shareholders, to carry forward and accumulate unpaid dividends from loss-making years, or to be repaid contributed capital ahead of other equity holders if the company dissolves.

Voting rights present a more complex perspective. In Private Companies, the Articles of Association may engineer virtually any voting ratio, giving preference shares more or less voting power than ordinary shares. Public Companies are more constrained: preference shares cannot be structured to command more votes than ordinary shares, though they may carry fewer. Public companies may also include a conversion mechanism that allows preference shareholders to convert into ordinary shares, provided the terms and procedures are explicitly stated in the Articles.

1.4 The Statutory Toolkit of Shareholder Rights

Regardless of share class or company type, Thai law guarantees shareholders a baseline set of rights that may be broadly grouped into economic entitlements and participatory rights.

Economic entitlements encompass:

- The right to receive dividends when declared
- The right to recover a proportionate share of residual assets upon the company's liquidation
- The right to transfer or dispose of shares
- The right of first offer on newly issued shares

Participatory rights, which relate to shareholders' ability to engage with and hold accountable the company's management, include:

- The right to propose items for inclusion on a meeting agenda
- The right to request or independently convene a shareholders' meeting
- The right to seek judicial revocation of resolutions that breach the law or the Articles of Association
- The right to participate in the selection and appointment of auditors
- The right to bring or support legal action against directors whose conduct causes loss to the company
- The right to examine corporate records, including the shareholder register and minutes of meetings

1.5 Capital Requirements: What the Law Actually Demands

There is a common misconception that Thai law prescribes a meaningful minimum share capital for all companies. In reality, no statutory floor exists for either Private or Public companies in general terms. The CCC requires only that each share in a Private Company carry a par value of at least 5 Baht; since a Private Company must have at least two shareholders, the theoretical floor is a nominal 10 Baht.

The calculus changes entirely when a Public Company seeks a stock exchange listing. Admission to the main SET board requires paid-up capital of at least 100 million Baht; companies targeting the Market for Alternative Investment (MAI), Thailand's second-tier exchange for smaller growth companies, must satisfy a lower but still substantial threshold of 50 million Baht.

1.6 Minimum Shareholder Numbers and Residency

Private Companies require a minimum of two promoters at the time of incorporation, each of whom must subscribe for at least one share and thereby becomes a founding shareholder. If the shareholder counts later contract to a single person, the court may order the company's dissolution. Public Companies demand a larger founding group, at least fifteen promoters, and face the same dissolution risk if numbers fall below that threshold post-incorporation, though only upon petition by shareholders holding at least 10% of sold shares.

On the question of residency, no restriction applies to Private Companies. For Public Companies, however, at least half of the founding promoters must be resident in Thailand at the time of incorporation. This is a one-time requirement applicable to the formation process only; it does not constrain the nationality or residency of shareholders who acquire shares through subsequent transfers.

1.7 Shareholders' Agreements: Contractual Architecture Alongside the Statute

Neither the CCC nor the PCL Act makes Shareholders' Agreements or Joint Venture Agreements a legal necessity. The statutes already furnish the scaffolding for shareholder relationships: rights, duties, meeting procedures, and governance frameworks are all addressed. Even so, such agreements have become a standard feature of Thai corporate practice, particularly wherever co-investors or joint venture partners are involved.

Their appeal lies in their flexibility. A well-drafted agreement allows parties to supplement and, within limits, to modify the default statutory position with bespoke provisions calibrated to the specific commercial relationship. This might include tailored mechanisms for board appointment and deadlock resolution, pre-agreed restrictions on share disposals, or carefully defined non-compete obligations. One boundary is firm, however: the contractual terms must not conflict with mandatory statutory provisions or the company's Articles of Association. Clauses that do so risk being unenforceable.

1.8 Common Provisions and Public Disclosure

A typical Shareholders' Agreement or Joint Venture Agreement will address, at minimum: the roles and financial contributions of each party; board seat allocation, nomination rights, and procedural rules for board and shareholder meetings; reserved matters requiring unanimous or supermajority consent; the distribution of profits; restrictions on share transfers (which commonly include lock-up arrangements, rights of first refusal, drag-along and tag-along provisions, and put or call options); confidentiality undertakings; non-competition covenants; deadlock mechanisms; and exit or termination provisions.

In most cases, the contents of these agreements remain private. The exception arises where a Listed Company is party to such an arrangement: disclosure obligations under SEC and SET rules may require the company to make material terms public, particularly where the agreement concerns the creation of a subsidiary, a significant acquisition or disposal of shares, or the structure of a major joint venture.

2. Shareholders' Meetings and Resolutions

2.1 Annual General Meetings: Obligation, Notice, and Agenda

Every Thai company, whether private or public, must hold an Annual General Meeting (AGM) at least once per year, convened within four months of the close of the company's fiscal year. The AGM is the principal formal occasion through which shareholders exercise collective oversight of the company. The standard agenda encompasses the board's report on performance and the upcoming operational plan, approval of audited financial statements, allocation of profits and declaration of dividends, election of directors to replace those retiring by rotation, approval of directors' compensation, and the appointment and remuneration of auditors.

Notice requirements differ by company type but represent statutory floors that cannot be contracted away or shortened by agreement. For Private Companies, written notice must reach all shareholders at least seven days before the meeting date, extended to fourteen days where the meeting will consider a special resolution. For Public Companies, the same minimum periods apply, with the additional requirement that notice be published in a local newspaper for at least three consecutive days. Listed Companies face further procedural obligations: following a board resolution to convene the AGM, the company must set a record date for at least fourteen days after the board resolution and must hold the meeting within two months of that date.

2.2 Extraordinary General Meetings

Beyond the mandatory annual gathering, both Private and Public companies may convene an Extraordinary General Meeting (EGM) whenever shareholder approval is needed for matters that cannot wait until the next AGM. The notice requirements for EGMs mirror those for AGMs in every respect and are equally non-negotiable as statutory minimums.

2.3 Who May Call a Meeting — and How

Convening authority ordinarily rests with the board of directors. Thai law does not, however, treat this as an exclusively board-held prerogative: shareholders who meet specified ownership thresholds may compel the board to act, and where the board fails to comply within the required period, may convene the meeting themselves.

In a Private Company, shareholders collectively holding at least one-fifth (20%) of total issued shares may submit a written request to the board; the board must respond by calling a meeting within 30 days of receipt. In a Public Company, the corresponding threshold is 10% of total issued shares, with the board required to act within 45 days. Any meeting convened under this shareholder-initiated process must observe the same notice and procedural rules applicable to any general meeting.

2.4 Information Rights: What Shareholders Are Entitled to See

The obligation to notify shareholders of an upcoming meeting extends to all shareholders, and the notice must be accompanied by the relevant supporting documentation. In Private Companies, financial statements must be circulated at least three days before the AGM. Public Companies face a higher standard: shareholders must receive both the financial statements and the full annual report in advance, and every meeting notice for both AGMs and EGMs must include the board's written opinion on each agenda item.

Beyond the meeting cycle, shareholders hold standing rights to access the company's core records. Under Thai law, any shareholder may inspect and request copies of the share register, minutes of board and shareholder meetings, and other documents the company is legally required to maintain. These access rights are a practical cornerstone of shareholder oversight, enabling investors to scrutinize governance and hold management to account outside of formal meeting settings.

2.5 Electronic and Hybrid Meetings

The COVID-19 pandemic accelerated a shift in Thai corporate practice that shows no sign of reversing. The Emergency Decree on Electronic Meetings B.E. 2563 (2020) gave legal recognition to fully electronic shareholders' meetings for both Private and Public companies, subject to compliance with prescribed procedural, technical, and cybersecurity standards. In the years since its enactment, the hybrid model where shareholders may attend physically or connect remotely has become the new normal for many Thai companies, particularly larger listed entities with geographically dispersed investor bases.

2.6 Quorum: The Threshold for a Valid Meeting

Without a valid quorum, no business transacted at a shareholders' meeting can produce legally binding resolutions. For Private Companies, a quorum is formed when at least two shareholders are present, together representing not less than one-quarter (25%) of total issued shares. The Articles of Association may raise but not lower this standard. For Public Companies, the PCL Act sets a dual requirement: at least 25 shareholders must be present or at least half the total shareholder count, whichever is fewer, and those present must collectively hold shares representing not less than one-third (33.3%) of all issued shares.

2.7 Ordinary and Special Resolutions

Thai corporate law draws a clear line between two categories of shareholder decision. Ordinary resolutions are carried by a simple majority of votes cast by shareholders present and entitled to vote. Special resolutions demand the approval of at least three-quarters (75%) of votes cast by shareholders present and entitled to vote, a threshold reflecting the gravity of the decisions to which they attach. Companies may, through their Articles of Association, adopt higher thresholds for either category, but they may not reduce them below the statutory minimums.

2.8 What Requires Shareholder Approval — and at What Threshold

For Private Companies, the AGM routinely considers matters requiring an ordinary resolution: the appointment of directors and auditors, their respective remuneration, the adoption of annual financial statements, and the declaration of dividends. Decisions of structural significance, such as amending the Articles or Memorandum of Association, altering registered capital, merging with another company, converting the corporate form, or dissolving the company, require a special resolution of at least 75% of votes present.

Public Companies follow a broadly similar framework for routine matters. The special resolution category additionally encompasses the sale or transfer of all or a substantial part of the company's business, acquisitions of other companies or businesses, significant leasing or management delegation arrangements, debenture issuances, and amalgamations. Two specific decisions attract enhanced thresholds under the PCL Act: removing a director requires a three-quarters majority of votes present combined with approval by at least half of all shareholders entitled to vote; approving directors' remuneration requires at least two-thirds of votes present.

2.9 How Votes Are Cast

Voting at shareholders' meetings ordinarily proceeds by show of hands unless a shareholder requests a secret ballot. The choice of method has voting-weight implications in Private Companies: under a show of hands, each shareholder (or proxy) commands a single vote irrespective of the number of shares held, whereas a poll or secret ballot reverts to the one-share-one-vote principle. In Public Companies, every share carries one vote regardless of the method used, except where preference shares with reduced or restricted voting rights have been issued in accordance with the Articles.

Shareholders who cannot attend in person may appoint a proxy to vote on their behalf. The proxy appointment must be made in writing, signed by the shareholder, and submitted to the company before the meeting commences. Where a meeting is conducted electronically or in hybrid format, shareholders joining remotely may cast their votes through digital means in accordance with the Emergency Decree on Electronic Meetings.

2.10 Proposing Business at a Meeting

The scope for introducing new business at a meeting, beyond what appears on the pre-circulated agenda, is tightly regulated. In Private Companies, only non-material matters may be raised on an ad hoc basis; resolutions on material or significant topics that were not properly notified to shareholders in advance are liable to be declared void. Public Companies afford somewhat more flexibility: shareholders collectively holding at least one-third (33.3%) of issued and sold shares may introduce additional agenda items once all notified matters have been disposed of, with consideration taking place at the same meeting.

Listed Companies have developed a further practice layer aligned with SET governance expectations: shareholders are typically invited to submit proposed agenda items in writing ahead of the AGM notice date, giving the board an opportunity to incorporate them formally into the agenda. Where a matter cannot be fully resolved at a given meeting, shareholders may agree to adjourn consideration of that item and fix a time, date, and venue for its continuation.

2.11 Challenging a Shareholders' Resolution

A resolution passed at a shareholders' meeting does not become immune from challenge merely by virtue of having been carried. Where a meeting or its resolutions were conducted in breach of applicable law or the Articles of Association, any aggrieved shareholder (or group of shareholders) may apply to the court for revocation. The petition window is narrow: proceedings must be initiated within one month of the date the resolution was passed.

Standing requirements differ significantly between company types. Any single shareholder in a Private Company may bring a revocation petition unilaterally. In a Public Company, the threshold is higher. The application must be supported by at least five shareholders, or by shareholders collectively holding not less than one-fifth (20%) of issued shares. Once the court has ruled on

the matter, the Public Company is required to communicate the outcome to all shareholders within one month of the judgment date.

2.12 The Role of Institutional Shareholders

Institutional investors and organized shareholder groups in Thailand hold no special rights beyond those available to other shareholders under statute. Their distinctive influence derives instead from the scale of their holdings. Significant minority or majority positions enable institutional shareholders to nominate candidates to the board, exercise decisive voting power at general meetings, and maintain a continuous line of visibility into management decisions and strategic direction through board representation. In Listed Companies, the public disclosure framework adds another monitoring channel: institutional shareholders can track company developments through mandatory regulatory filings even outside the formal meeting cycle.

2.13 Nominee Shareholding

Thai law treats the share register as the definitive record of ownership. The person whose name appears in that register is the shareholder with all attendant rights to receive notices and meeting documentation, attend and vote at meetings, and exercise every other shareholder entitlement. A beneficial owner who holds economic exposure through a nominee is not legally recognized as a shareholder and must channel any exercise of rights through the registered nominee.

The practical boundaries of nominee arrangements deserve careful attention. The FBA strictly prohibits the use of nominees to disguise or facilitate foreign ownership in excess of permitted limits. Arrangements designed to circumvent the FBA expose both the foreign beneficial owner and the Thai nominee to criminal liability.

2.14 The Absence of Written Resolution Procedures

Unlike certain other jurisdictions, Thai corporate law does not permit shareholders to pass resolutions by written consent circulated in lieu of a meeting. A formal meeting, held either physically or by electronic means, is required in all cases. Shareholders who are unable to participate in person retain the option of appointing a proxy, subject to the usual requirements as to form and timing.

3. Share Issues, Transfers and Disclosure of Interests

3.1 Pre-emption Rights on New Share Issues

Thai law generally requires that whenever a company proposes to issue new shares, those shares must first be offered to existing shareholders in proportion to their current holdings. The rationale is straightforward: to protect shareholders against undue dilution of their economic interest and voting power. Where an existing shareholder in a Private Company declines to take up the offered shares, the directors may either subscribe for those shares themselves or reallocate them to other shareholders who wish to acquire more than their pro-rata entitlement.

Public Companies enjoy greater flexibility. They may issue new shares to third parties, including through a Private Placement (PP), provided the issuance satisfies the applicable conditions under the PCL Act. Listed Companies operate within the most complex framework: new shares may be offered to the public at large or to specific identified investors through either a Public Offering (PO)

or a Private Placement, but the issuance must rest on a valid shareholders' resolution and the intended recipients must be clearly identified in the resolution documentation.

3.2 Restrictions on Share Transfers

The transferability of shares varies considerably depending on the type of company. In a Private Company, shares may in principle be freely transferred, but the Articles of Association commonly impose restrictions — most typically, a requirement that transfers to third parties outside the existing shareholder group receive prior approval at a shareholders' meeting. This gives existing shareholders collective control over who may join the company.

Public Companies operate under the opposite presumption. The PCL Act prohibits a Public Company from restricting the transfer of its shares, subject only to narrow exceptions where restrictions are necessary to protect the company's legal rights or to preserve a mandated Thai-to-foreign ownership ratio. The position is even more pronounced for Listed Companies, where SET Listing Rules require that shares admitted to trading be free from transfer restrictions (other than those expressly permitted by law and reflected in the Articles), preserving the marketability of listed equity.

3.3 Using Shares as Security

Shareholders are generally free to encumber their shares by way of security, provided that nothing in the relevant shareholders' agreement or the company's constitutional documents prohibits this. The use of listed shares as collateral for margin financing offered by licensed securities firms is a well-established and widely used practice in Thailand's capital markets.

Companies themselves are subject to a distinct and more restrictive rule. As a general principle, a company may not accept its own shares as a pledge or provide financial assistance for dealings in its own equity. The PCL Act carves out a limited exception for Public Companies holding treasury shares arising from a formally approved share repurchase program, circumstances in which the usual constraints are relaxed to the extent necessary to administer and eventually dispose of those repurchased shares.

3.4 Mandatory Disclosure of Shareholding Interests

Shareholders in Private Companies face no general obligation to disclose their beneficial ownership, though the shareholder register is available for inspection by those who wish to verify ownership which is maintained by the Department of Business Development (DBD) in the form of the List of Shareholders (Form BorJ.5 / BorMorJor 006).

The disclosure landscape for Listed Companies is markedly more demanding. SEC regulations impose a mandatory reporting obligation on any shareholder or group of shareholders acting in concert as defined under securities law, whose aggregate voting rights in a Listed Company reach, exceed, or fall back through the 5% reporting threshold. Each crossing of that line, whether upward or downward, must be reported to the SEC by way of a substantial shareholding notification. This regime is designed to ensure that the market and other investors have timely visibility into significant concentrations of influence.

4. Cancellation and Buybacks of Shares

4.1 Reducing Share Capital Through Cancellation

A company wishing to cancel shares must do so through a formal capital reduction process, which may be implemented either by reducing the par value of existing shares or by retiring a portion of the shares in issue. Either approach requires the backing of a special resolution which is at least 75% of votes cast by shareholders present and entitled to vote. Beyond securing that approval, the company must give formal notice of the proposed reduction to its creditors. This creditor notification requirement reflects a foundational principle of company law: registered capital functions as an assurance to creditors, and its reduction directly affects the cushion of assets available to meet outstanding obligations.

4.2 Share Repurchase Program

The general prohibition on a company repurchasing its own shares is well established in Thai law. The PCL Act, however, creates two pathways through which Public Companies may lawfully do so. The first arises in a dissent context: where a shareholders' resolution amends the Articles of Association in ways that alter voting rights or dividend entitlements, shareholders who opposed the amendment may require the company to buy back their shares. The second is a financial management mechanism: companies that have accumulated retained earnings and hold cash in excess of operational requirements may conduct a buyback as a means of returning value to shareholders.

In practice, Listed Companies undertaking buybacks must navigate several concurrent constraints. The program must be calibrated against retained earnings available for distribution; it must not compromise the company's capacity to service existing and anticipated debt; and it must not cause the public free-float to fall below the 15% of paid-up capital that SET Listing Rules require to be held by minority shareholders.

5. Dividends

A shareholder's right to receive dividends is real but conditional: distributions can only be made from profits and require authorization by the shareholders' meeting. Interim dividends represent a partial exception — the board of directors may approve them without convening a full shareholders' meeting, though such payments must subsequently be reported to and acknowledged by shareholders at the next meeting. In either case, dividends must be allocated equally across shares of the same class unless the Articles provide for differentiated treatment.

Before any dividend is declared, Thai law imposes a mandatory appropriation to a statutory reserve fund: no less than 5% of net profit — calculated after deducting accumulated losses in the case of a Public Company — must be set aside each year until the fund accumulates to at least 10% of the company's registered capital. Only profits remaining after this allocation are available for distribution. Once declared, dividends must be paid to shareholders within one month of the approving resolution.

6. Shareholders' Rights as Regards Directors and Auditors

6.1 Appointing and Removing Directors

The power to seat and unseat directors is one of the most consequential rights shareholders hold. At a fundamental level, shareholders control the board: directors are appointed by ordinary resolution at the AGM in accordance with the Articles of Association, and the same shareholders' meeting that installs a director may remove one by passing an appropriate resolution.

The mechanics of that voting power differ between company types in ways that matter. In a Private Company, absent a contrary provision in the Articles or a shareholder demand for a poll, the default rule under the CCC is one shareholder, one vote — a rule that can significantly underweight the economic interests of shareholders with larger stakes. In a Public Company, the default operates more intuitively: shareholders are entitled to votes in proportion to their shareholding, multiplied by the number of directors to be elected at that meeting. This structure, analogous to cumulative voting systems used elsewhere, gives smaller shareholders a mechanism to consolidate votes behind a preferred candidate. Given the practical importance of these rules, companies are well advised to specify the applicable voting procedure clearly in their Articles.

6.2 Challenging Directors' Conduct

Beyond the formal power to remove a director, shareholders have tools to challenge the board's decisions more immediately. Shareholders holding at least 10% of issued shares may formally requisition an EGM to consider any matter they wish to put before the company, including a demand that the directors take or reverse a specific action. The board must respond within the statutory timeframe and conduct the meeting in accordance with applicable procedural rules.

An important limitation applies once shareholders have acted: if a shareholders' meeting ratifies a director's conduct, that ratification generally discharges the director from any liability to the company and to the approving shareholders. The ratification principle does not, however, extend to acts tainted by fraud or to conduct that is legally incapable of ratification.

6.3 Auditor Appointment, Reappointment, and Removal

Shareholders appoint the company's auditors at each AGM, fix their remuneration, and decide whether to reappoint them for a further term. Removal of an auditor equally requires a shareholders' resolution. For Listed Companies, an additional safeguard against the entrenchment of long-serving auditors applies: any auditor who has signed off on the company's accounts for seven accounting years — whether those years were consecutive or not — must then stand aside for a mandatory cooling-off period of at least five accounting years before being eligible for reappointment.

7. Corporate Governance Reporting

The depth of directors' governance reporting obligations to shareholders tracks the type of company. For Private Companies, no specific governance report is required, though the maintenance of accurate minute books for both board and shareholder meetings serves as a de facto accountability mechanism: shareholders may inspect these records during business hours at any time.

Public Companies are held to a higher standard. The board must prepare and circulate an annual report to shareholders before the AGM. For Listed Companies, this obligation extends further: the company must publish both a full annual report and the Form 56-1 One Report — a

comprehensive disclosure document that addresses the company's business operations, financial results, governance structure, internal control systems, risk management approach, and related-party transactions. The Form 56-1 serves as the primary instrument through which listed companies communicate their governance quality to investors and the wider market.

8. The Controlling Shareholder

Thai law does not impose duties on a parent or controlling company directly toward the shareholders of the companies it controls. The principle of separate legal personality means that each company in a corporate group bears its own rights and obligations independently. A parent company is not, by virtue of its shareholding, treated as owing fiduciary or statutory duties to the minority shareholders of a subsidiary.

In practice, however, a controlling company typically secures board representation in its subsidiaries by appointing nominee directors. Those individuals, once appointed, assume the full suite of director obligations owed to the subsidiary and its shareholders, not to the parent that nominated them. The parent's influence therefore operates through its appointees' fiduciary responsibilities rather than through any direct duty running from parent to subsidiary shareholders.

9. Shareholder Rights in Financial Distress and Insolvency

Thai law builds in an early-warning trigger designed to surface financial distress before it reaches crisis point. If a company's losses erode its net assets to less than half of registered capital, the directors are obligated to immediately convene an EGM to place the financial situation before shareholders. This mechanism creates a formal moment of accountability, requiring the board to confront and disclose deteriorating performance rather than allowing shareholders to remain uninformed until the position becomes irretrievable.

Where the company ultimately cannot sustain its obligations, it faces two broad paths: voluntary or compulsory liquidation, or court-supervised rehabilitation under the Bankruptcy Act. In a liquidation, ordinary shareholders occupy the most junior position in the creditor waterfall — they are entitled to share in any residual assets only after the company has fully discharged its liabilities to all creditors, including holders of preference shares and other priority claimants. In many insolvencies, this junior position means ordinary shareholders recover little or nothing.

10. Shareholders' Remedies

10.1 Legal Recourse Against the Company

Where a company acts in a manner that infringes shareholders' rights or that is unfair or oppressive, shareholders are not without recourse. Beyond the procedural rights to challenge resolutions and inspect records addressed earlier in this article, shareholders may bring court proceedings to compel the company to comply with applicable law or to give effect to valid shareholder resolutions. They may also seek injunctive relief to restrain conduct that contravenes

their legal rights, or apply for the annulment of resolutions adopted in breach of statutory procedure or the Articles of Association.

10.2 Holding Directors Personally Accountable

Directors who mismanage the company or breach their duties may be personally liable for resulting losses. The company itself is the primary claimant in such situations: the right to sue a director for compensation belongs, in the first instance, to the company rather than to individual shareholders. Where, however, the company declines or fails to pursue a director who has caused it harm, shareholders step into that gap through a derivative action which is that a claim brought by shareholders on the company's behalf rather than in their own name.

10.3 Derivative Claims: Conditions and Limits

The conditions for bringing a derivative claim differ between Private and Public companies. In a Private Company, any single shareholder may initiate the action without needing to aggregate support. In a Public Company, shareholders must first formally call on the company to pursue the claim; only if the company fails to act may those shareholders, provided they together hold at least 5% of sold shares, file the claim in the company's name.

Ratification by the shareholders' meeting of a director's impugned conduct generally extinguishes the right to sue for that conduct. The PCL Act introduces an important carve-out for Public Companies, however: shareholders who voted against the approving resolution do not lose their right to bring a derivative claim and may do so within six months of the date the resolution was passed.

11. Shareholder Activism in Thailand

11.1 The Regulatory Environment

Shareholder activism in Thailand remains at an early stage of development compared to more mature markets. Its expression has been most visible in the ESG space, particularly among investors in Listed Companies who have used governance channels to press for improved environmental and social accountability. No statute specifically regulates — or, conversely, specifically enables — shareholder activism as a defined practice. Instead, the rights framework described throughout this article — encompassing the ability to nominate directors and auditors, introduce agenda items, challenge unlawful resolutions, and pursue derivative claims against directors who breach their duties under the Securities and Exchange Act — collectively constitutes the legal architecture through which activist ambitions are pursued.

At the soft law level, the SEC's Corporate Governance Code (CG Code) for listed companies sets expectations around board behavior toward shareholders, requiring equitable treatment, transparency, and responsiveness. Adoption of the CG Code is widespread among listed companies, though its voluntary nature means enforcement depends on reputational rather than legal pressure.

11.2 What Activists Are Actually Seeking

Activist shareholders in Thailand tend to pursue one or more of three broad objectives: changing the composition or behavior of the board, redirecting corporate strategy, or improving governance standards. In some cases, the motivation is a belief that the company is undervalued and that operational or strategic changes could release that value. In others, the concern is more specifically about governance deficiencies — insufficient board independence, weak internal controls, inadequate disclosure, or related-party transactions perceived to disadvantage minority investors.

11.3 Tactics Employed by Activist Shareholders

The typical activist playbook in Thailand begins with private engagement. Before any public confrontation, shareholders will usually approach management or the board directly — through correspondence or meetings — to articulate their concerns and seek a response. This back-channel approach reflects both cultural norms around conflict resolution and a pragmatic calculation that resolution through dialogue is less costly than litigation or public dispute.

Where private engagement fails to produce movement, activists may escalate. Options include building coalitions with other like-minded shareholders to consolidate voting power, systematically gathering proxy votes from passive shareholders ahead of an AGM or EGM, and — where ownership thresholds allow — formally requisitioning a meeting to put their proposals directly to the shareholder body. In some instances, activists incrementally increase their stake in the target company to strengthen their negotiating position and voting clout.

11.4 Industry Patterns and Market Capitalization Trends

No clear sectoral pattern has emerged in Thai shareholder activism. The relatively low frequency of organized activist campaigns makes it difficult to identify industries that are disproportionately targeted, and market capitalization does not appear to be a consistent determinant of which companies attract attention. The phenomenon remains too diffuse and informal to support reliable trend analysis.

11.5 Who Is Most Likely to Act

Among the various categories of investor active in Thailand's markets, one organization stands out for the consistency and regularity of its engagement: the Thai Investors Association, which advocates on behalf of retail and minority shareholders. The Association's representatives attend AGMs with notable frequency, posing questions on governance practices, executive remuneration, company performance, and minority shareholder treatment. While their activities fall short of a coordinated activist campaign in the conventional sense, they perform a de facto monitoring function that influences how listed companies prepare for and conduct their annual meetings.

11.6 Measuring Outcomes

Any attempt to quantify how frequently activist demands are met in Thailand runs into a fundamental data problem: most shareholder engagement in Thailand occurs informally and without public disclosure. Questions and suggestions are raised at meetings, conversations happen behind closed doors, and adjustments — if any are made — are implemented quietly. Without a culture of structured, publicly announced activist campaigns accompanied by disclosed settlements or outcomes, reliable measurement is not possible.

11.7 How Companies Can Respond — and What They Cannot Do

A company facing an activist shareholder operates within real legal constraints. Shareholders' statutory rights — to request information, convene meetings, table resolutions, and litigate — cannot be suppressed by board resolution or corporate policy. Shareholders with substantial stakes may deploy these rights to materially redirect corporate policy, even against the resistance of incumbent management.

The more productive response involves getting ahead of the conditions that create activist pressure. Companies that invest in high-quality, proactive disclosure — communicating strategy, risks, and governance arrangements clearly and regularly — reduce the information vacuum that gives activists their opening. Prompt, substantive responses to shareholder questions and concerns at the board level can prevent grievances from hardening into formal campaigns. Systematic monitoring of ESG-related sentiment and peer governance benchmarks enables boards to spot and respond to emerging expectations before they become flashpoints.

When activists do emerge, the instinct to entrench is usually counterproductive. Experience in Thailand and elsewhere suggests that companies willing to engage openly, acknowledge legitimate concerns, and explore workable solutions not only defuse immediate tensions but often strengthen their governance credentials in the process. A well-handled activist encounter can, paradoxically, become an opportunity to deepen investor confidence and demonstrate that the board is genuinely responsive to its shareholders.