

Thailand Civil and Commercial Code

Chapter IV

Limited Companies Law Code

Part I

Nature and Formation of Limited Companies

Section 1096. A limited company is that type of which is formed with Capital divided into shares, and the liability of the shareholders is limited by the amount, if any, unpaid on those shares respectively held by each shareholder.

Section 1096 bis. (Repealed)

Section 1097. Any seven or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company.

Section 1098. The memorandum shall contain the following details:

- (1) The name of the proposed company, which must always end with the word “limited”.
- (2) The part of the Kingdom in which the registered office of the company shall be located.
- (3) The objects of the company.
- (4) A declaration that the liability of the shareholders shall be limited
- (5) The amount of share capital with which the company proposes to be registered, and the divisions thereof into shares of a fixed amount.
- (6) The names, addresses, occupations and signatures of the promoters, and the number of shares subscribed to each of them.

Section 1099. The memorandum must be made in two original copies at least and signed by the promoters, and the signatures should be certified by two witnesses.

One of the copies of the memorandum must be deposited and registered at the Registration Office of that part of the Kingdom in which the registered office of the company is deemed to be situated.

Section 1100. Every promoter must subscribe at least one share.

The liability of the directors of a limited company may be unlimited.

In such case, a statement to that effect must be provided in the memorandum.

The unlimited liability of a director terminates at the expiration of two years after the date at which he stopped holding office.

Section 1102. No invitation to subscribe for shares should be made to the public.

Section 1103. (Repealed)

Section 1104. The whole number of shares with which the company proposes to be registered must be subscribed or allotted prior to registration of the company.

Section 1105. Shares may not be issued at a lesser price than their nominal amount.

The issue of shares at a higher price than their nominal amount is allowed, if stated by the memorandum. In such case the excess amount must be paid along with the first payment.

The first payment on the shares must not be less than twenty-five per cent of their nominal amount.

Section 1106. A person binds himself when subscribing for shares, on condition that the company be formed, and to pay the company the amount of such shares in alignment with the prospectus and regulations.

Section 1107. When all the shares to be paid in money have been subscribed, the promoters must without delay hold a general meeting of subscribers which should be called the statutory meeting.

The promoters shall, at least seven days before the day on which the meeting is to be held, forward to every subscriber a statutory report, duly certified by them, outlining the details of the business to be transacted at the statutory meeting under the following section.

The promoters shall ensure that a copy of the statutory report, certified as by this section required, is filed with the Registrar of companies forthwith after sending thereof to the subscribers.

The promoters shall also ensure that a list showing the names, descriptions and addresses of the subscribers, and the number of shares subscribed by them respectively, is produced at the meeting.

The provisions of Section 1176, 1187, 1188, 1189, 1191, 1192 and 1195 shall apply *mutatis mutandis* to the statutory meeting.

Section 1108. The business to be transacted at the statutory meeting:

- (1) The adoption of the regulations of the company, if any.
- (2) The ratification of any contracts signed into and any expenses incurred by the promoters in promoting the company.
- (3) The fixing of the amount, if any, to be paid to the promoters.
- (4) The fixing of the number of preference shares, if any, to be issued, and the nature and breadth of the preferential rights accruing to them.
- (5) The fixing of the number of ordinary shares or preference shares to be allotted as fully or partly paid-up otherwise than in money, if any, and the amount up to which they shall be considered as paid-up.

The description of the service or property in return for which such ordinary shares or preference shares shall be allotted as paid-up shall be expressly decided upon before the meeting.

- (6) The appointment of the first directors and auditors and the fixing of their respective powers.

Section 1109. A promoter or a subscriber who has a special interest in a resolution cannot exercise the right of voting.

No resolutions of the statutory meeting are valid unless passed by a majority including at least one half of the total number of subscribers allowed to vote, and representing at least one half of the total number of shares of such subscribers.

Section 1110. After the statutory meeting is held, the promoters shall turn over the business to the directors.

The directors will then cause the promoters and subscribers to pay forthwith upon each share payable in money such amount, not less than twenty-five per cent, as detailed by the prospectus, notice, advertisement or invitation.

Section 1111. When the amount mentioned in Section 1110 has been paid, the directors must apply for the registration of the company.

The application and entry in the register shall contain, in conformity with the decisions of the statutory meeting, the following details:

- (1) The total number of shares subscribed or allotted, distinguishing ordinary shares and preference shares.
- (2) The number of ordinary shares or preference shares allotted as fully or partly paid-up otherwise than in money, and in the latter case, the amount to which they are so paid up.
- (3) The amount already paid in money on each share.
- (4) The total amount of money received in respect of shares.
- (5) The names, occupations and addresses of the directors.
- (6) If the directors have power to act separately, their respective powers and the number or names of the directors whose signature is binding on the company.
- (7) The period, if any has been fixed, for which the company is formed.
- (8) The address of the main business office and of all branch offices.

The entry may contain any other details which the directors may deem expedient to make known to the public.

The application must be accompanied by the copy of the regulations, if any, and of the proceedings of the statutory meeting, both certified by the signature of at least one director.

The directors must concurrently deposit with the Registration Office ten printed copies of the memorandum and of the regulations, if any, of the company.

A certificate of registration shall be delivered to the company.

Section 1112. If registration does not take place within three months of the statutory meeting, the company is not formed, and all the money received from the applicants must be paid back without deduction.

If any such money has not been paid back within three months after the statutory meeting, the directors of the company are jointly liable to repay that money with interest from the expiration date of the three months deadline.

A director shall not be liable for repayment of interest if he demonstrates factually that the loss of money or delay was not due to his fault.

Section 1113. The promoters of the company are jointly and unlimitedly liable for all obligations and disbursement not approved by the statutory meeting; even if approved they remain so liable until the registration of the company.

Section 1114. After a company is registered, a subscriber of shares cannot file a claim for cancellation by the Court of his subscription on grounds of a mistake, duress or fraud.

Section 1115. If the name provided in a memorandum is identical to the name of an existing registered company or with the name provided in a registered memorandum, or so nearly resembling the same as to be likely to deceive the public, any interested person can file a claim for compensation against the promoters of the company and can ask for an order from the Court that the name be altered.

Upon such order being made, the new name must be registered in the place of the former name and the certificate of registration must be updated accordingly.

Section 1116. Any interested person is allowed to obtain from any company a copy of its memorandum and registration, for which a sum not exceeding one baht per copy may be collected by the company.

PART II

Shares and Shareholders

Section 1117. The amount of a share may not be less than five baht.

Section 1118. Shares are indivisible.

If a share is held by two or more persons in common, they must assign one of them to exercise their rights as shareholders.

Persons holding a share in common are jointly liable to the company for payment of the amount of the share.

Section 1119. The total amount of every share must be paid in money, except shares allotted under Section 1108 sub-section 5, or under Section 1221.

A shareholder cannot avail himself of a set-off against the company as to payments on shares.

Section 1120. Unless otherwise agreed by a general meeting, the directors may call upon the shareholders in respect of all money being due on their shares.

Section 1121. Twenty-one days notice at minimum must be provided by registered letter of each call and each shareholder must pay the amount of such call to the person and at the time and place decided on and fixed by the directors.

Section 1122. If the call payable in respect of any share has not been paid on the day fixed for payment thereof, the holder of said share is bound to pay interest from the day fixed for payment to the time actual payment is made.

Section 1123. If a shareholder does not pay a call on the day fixed for payment thereof, the directors may give him notice by registered letter to pay such call with interest.

The notice must set a reasonable time within which such call and interest must be paid.

It must also set the place where payment must be made. The notice may also state that in the case of non-payment the share in respect of which such call was made may be forfeited.

Section 1124. If a statement as to forfeiture has been provided in the notice the directors may, as long as the call and interest remain unpaid, determine the shares to be forfeited.

Section 1125. Shares forfeited must be sold without delay by public auction. The proceeds must be applied to the payment of the call and interest due. The surplus, if any, is required to be returned to the shareholder.

Section 1126. The title of the purchaser of the forfeited share is not affected by any aberration in the proceedings of such forfeiture and sale.

Section 1127. A certificate or certificates shall be provided to each shareholder for the shares held by him.

The delivery of a certificate may be subject to the payment of such fee, not surpassing fifty satang, as the directors may decide.

Section 1128. Every certificate of shares shall be signed by one of the directors at least, and shall bear the seal of the company.

It must contain the following details:

- (1) The name of the company.
- (2) The numbers of the shares to which it applies.
- (3) The amount of each share.
- (4) In the case the shares are not fully paid up, the amount paid on each share.
- (5) The name of the shareholder or a statement that the certificate is to bearer.

Section 1129. Shares are transferable without the assets of the company unless, in case of shares denoted in a name certificate, it is otherwise stated in the regulations of the company that The transfer of shares denoted in a name certificate is void unless made in writing and signed by the transferor and the transferee whose signatures shall be certified by at least one witness.

Such transfer is invalid as against the company and third person until the fact of the transfer and the name and address of the transferee are denoted in the register of shareholders.

Section 1130. The company may decline to register a transfer of shares on which a call is due.

Section 1131. The transfer book may be closed during fourteen days immediately prior to the ordinary general meeting.

Section 1132. If by some event such as the death or bankruptcy of any shareholder, another person becomes entitled to a share, the company shall, on surrender of the share certificate when possible, and on proper evidence being provided, register such other person as a shareholder.

Section 1133. The transferor of a share not fully paid up continues to be liable for the full amount unpaid thereon, given that:

(1) No transferor shall be liable in reference to any obligation of the company incurred after the transfer.

(2) No transferor shall be liable to continue unless it comes to the Court's attention that the existing shareholders are unable to satisfy the contributions required to be made by them.

No action against the transferor for such liability can be made later than two years after the transfer has been entered in the register of shareholders.

Section 1134. Certificates to bearer may be issued only if authorized by the regulations of the company and for shares which are fully paid up. In such case the holder of a name certificate is entitled to receive certificate to bearer on surrendering the name certificate for cancellation.

Section 1135. Shares entered in a certificate to bearer are transferred by the mere delivery of certificate.

Section 1136. The holder of a certificate to bearer is entitled to be given a name certificate on surrendering the certificate to bearer for cancellation.

Section 1137. If it is stated by the regulations of the company that a director must hold a certain number of shares of the company as a qualification for such office, such shares must be shares stated in a name certificate.

Section 1138. Every limited company must keep a register of shareholders containing the following details:

The names and addresses, and occupations, if any, of the shareholders, a statement of the shares held by each share

(1) holder, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each shareholder .

(2) The date at which each person was entered in the register as a shareholder.

(3) The date at which each shareholder ceased to be a shareholder.

(4) The numbers and date of certificates issued to bearer, and the respective numbers of shares entered in each such certificate.

(5) The date of cancellation of any name certificate or certificate bearer.

Section 1139. The register of shareholders commencing from the date of the registration of the company should be kept at the registered office of the company. It must be gratuitously open to inspection by the shareholders, during business hours, subjected to such reasonable restrictions as the directors may require, but not less than 2 hours a day.

It shall be the responsibility of the directors to send once at least in every year to the Registrar, and not later than on the fourteenth day after the ordinary meeting, a copy of the list of all shareholders at the time such meeting and those who are no longer shareholders since the date of the last ordinary meeting. Such list shall include all details specified in the foregoing section.

Section 1140. Any shareholder is allowed to require a copy of such register or of any part thereof to be delivered to him on payment of fifty satang for every hundred words required to be copied.

Section 1141. The register of shareholders is thought to be correct proof of any matters directed or authorized by law to be inserted therein.

Section 1142. If preference shares have been issued, the preferential rights attributed to such shares cannot be altered.

Section 1143. A limited company may not own its own shares or take them in pledge.

PART III

Management of Limited Companies

1. GENERAL PROVISIONS

Section 1144. Every limited company must be managed by a director or directors under the control of the general meeting of shareholders and according to the regulations of the company.

Section 1145. After registration of the company, no regulations may be created and no additions to or alterations of the regulations or of the contents of the memorandum may be allowed except by passing a special resolution.

Section 1146. It shall be the duty of the company to enforce the registration of every new regulation, addition or alteration within fourteen days after the date of the special resolution.

Section 1147. Ten printed copies of every new regulation or of the altered memorandum or regulation shall be provided at the same time at the Registration Office.

Section 1148. Every limited company may maintain a registered office to which all communications and notices may be addressed.

Notice of the situation of the registered office and of any change therein, shall be given to the Registrar of companies, who shall record the same.

Section 1149. As long as the shares have not been fully paid up, the company can not print or mention the capital of the company in any notice, advertisement, bills, invoices, letters or other documents, without also clearly mentioning at the same time what percentage of such capital has been paid up.

2. DIRECTORS

Section 1150. The number and remuneration of the directors shall be fixed by a general meeting.

Section 1151. A director can be appointed or removed only by a general meeting.

Section 1152. At the first ordinary meeting after the registration of the company and at the first ordinary meeting in every subsequent year, one-third of the directors, or, if their number is not a multiple of three, then the number nearest to one-third will have to retire from office.

Section 1153. Any director who would like to resign from his post shall submit his resignation letter to the company. The resignation shall take effect from the date the resignation letter reaches the company.

The director who resigns under paragraph one may notify the Registrar of his resignation.

Section 1154. If a director becomes bankrupt or incapacitated, his office is vacated.

Section 1155. Any vacancy occurring in the board of directors in a fashion other than by rotation can be filled up by the directors, but any person so appointed shall retain his office during the time frame only as the vacating director was entitled to retain the same.

Section 1156. If a general meeting removes a director prior to the expiration of his period of office, and appoints another person in his stead, the person so appointed shall retain his office during the time period only as the removed director was entitled to retain the same.

Section 1157. When there is a change of a director or directors, the company shall submit the registration thereof within fourteen days from the date of such change.

Section 1158. Unless otherwise provided by the regulations of the company, the directors have the powers described in the six following sections.

Section 1159. The subsisting directors may act notwithstanding any vacancy among them but, if and so long as their number is lowered below the number necessary to form a quorum, the subsisting directors can act for the purpose of increasing the number of directors to that number, or of calling for a general meeting of the company but for no other purpose.

Section 1160. The directors may set the quorum necessary for the transaction of business at their meetings and unless so fixed the quorum shall (when the number of directors exceeds three) be three.

Section 1161. Questions arising at any meeting of directors are decided by a majority of votes, in case of an equality of votes the chairman has a casting vote.

Section 1162. A director may at any time call for a meeting of directors.

Section 1163. The directors may elect a chairman of their meetings, and fix the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present may choose one of their members to be chairman of such meeting.

Section 1164. The directors may delegate any of their powers to managers or to committees made up of members of their body. Every manager or committee shall, in the exercise of the

power so delegated, conform to any order or regulation that may be imposed on them by the directors.

Section 1165. Unless otherwise provided by the delegation, questions arising at any meeting of a committee shall be decided by a majority of votes of the members; in case of an equality of votes the chairman has a casting vote.

Section 1166. All acts made by a director shall, regardless of if it be afterwards discovered that there was some defect in his appointment, or that he was disqualified, be as valid as if such person had been duly appointed and was qualified to be a director.

Section 1167. The relations between the directors, the company and third persons are governed by the provisions of this Code concerning Agency.

Section 1168. The directors must display the diligent conduct of a careful business man in the conduct of the business.

In particular they are jointly responsible:

- (1) For the payment of shares by the shareholders being actually made;
- (2) For the existence and regular keeping of the books and documents prescribed by law;
- (3) For the proper distribution of the dividend or interest as prescribed by law;
- (4) For the proper enforcement of resolutions of the general meetings.

A director can not without the consent of the general meeting of shareholders, become involved with commercial transactions of the same nature as and competing with that of the company, either on his own account or that of a third person, nor may he be a partner with unlimited liability in another concern carrying on business of the same nature as and competing with that of the company.

Section 1169. Claims against the directors for compensation for injury caused by them to the company may be filed by the company or, in case the company refuses to act, by any of the shareholders.

Such claims may also be enforced by the creditors of the company in so far as their claims against the company remain unsatisfied.

Section 1170. When the acts of a director have been approved by a general meeting, such director is no longer liable for the said acts to the shareholders who have approved them, or to the company.

Shareholders who did not approve of such acts cannot enter their action later than six months after the date of the general meeting on which such acts were approved.

3. GENERAL MEETINGS

Section 1171. A general meeting of shareholders should be held within six months after the registration, and shall thereafter be held at least every 12 months. Such meeting is classified as an ordinary meeting.

All other general meetings are classified as extraordinary meetings.

Section 1172. The directors may call for extraordinary meetings whenever they think fit.

They must immediately, without delay, call for such meetings when the company has lost half the amount of its capital, in order to inform the shareholders of such loss.

Section 1173. Extraordinary meetings must be called for if a requisition to that effect is made in writing by shareholders holding not less than one-fifth of the shares of the company. The requisition must specify the object for which the meeting is required to be called for.

Section 1174. Whenever a requisition for the calling for an extraordinary meeting is made by the shareholders according to the last preceding section, the directors shall forthwith call for such meeting.

If the meeting is not called for within thirty days after the date of the requisition, the person asking for the requisition, or any other shareholder amounting to the required number, may themselves call for it.

Section 1175. Notice of the calling for every general meeting shall either be published at least twice in a local newspaper, not later than seven days before the date set for the meeting, or shall be sent by post not later than seven days before the date set for the meeting to every shareholder whose name appears in the register of shareholders.

The notice shall specify the place, the day and the hour of meeting and the nature of the business to be transacted.

Section 1176. Every shareholder has the right to be present at any general meeting.

Section 1177. Unless there are provisions to the contrary in the regulations of the company, the rules detailed by the following sections shall apply to general meetings.

Section 1178. A general meeting may not transact any business unless shareholders representing at least one-fourth of the capital of the company are present.

Section 1179. If within an hour from the time appointment for the general meeting the quorum prescribed by Section 1178 is not present, the meeting, if called for based upon the requisition of shareholders, must be dissolved.

If the general meeting had not been called for based upon the requisition of shareholders, another general meeting shall be called for within fourteen days and at such meeting no quorum shall be necessary.

Section 1180. The chairman of the board of directors shall preside at every general meeting of shareholders.

If no such chairman exists, or if at any general meeting he is not present within fifteen minutes after the time scheduled for holding the meeting, the shareholders present may elect one of their members to be chairman.

Section 1181. The chairman may, with the consent of meeting, adjourn any general meeting, but no business may be transacted at any adjourned meeting other than the business left incomplete at the original meeting.

Section 1182. On a show of hands every shareholder present in person or represented by proxy must have one vote. On a poll every shareholder must have one vote for each share of which he is the holder.

Section 1183. If the regulations of the company state that no shareholder is entitled to vote unless he is in possession of a certain number of shares, the shareholder who does not possess

such number of shares has the right to join in order to form the said number and elect one of them as proxy to represent them and vote at any general meeting.

Section 1184. No shareholder is allowed to vote unless all calls due by him have been paid.

Section 1185. A shareholder who has in a resolution, a special interest cannot vote on such resolution.

Section 1186. Holders of certificates to bearer may not vote unless they have deposited their certificate with the company before the meeting.

Section 1187. Any shareholder may vote by proxy, provided the power given to such proxy is in writing.

Section 1188. The document appointing a proxy shall be dated and signed by the shareholder and shall contain the following details:

- (1) The number of shares held by the shareholder
- (2) The name of the proxy
- (3) The meeting or meetings or the period for which the proxy is appointed.

Section 1189. The document appointing a proxy must be deposited with the chairman at or before the beginning of the meeting at which the proxy named in such document proposed to vote.

Section 1190. At any general meeting, a resolution voted on shall be determined on a show of hands, unless a poll is, before or on the declaration of the result of the show of hands, asked for by at least two shareholders.

Section 1191. At any general meeting, a declaration by the chairman that a resolution has on a show of hands, been passed or lost, and an entry detailing this in the books of the proceedings of the company shall be sufficient evidence of the fact.

If a poll is demanded, the result of the poll shall be deemed to be the resolution of the meeting.

Section 1192. If a poll is duly demanded, it shall be taken in such manner as the chairman directs.

Section 1193. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a second or casting vote.

Section 1194. A resolution is deemed to be a special resolution if passed by two successive general meetings in the following way.

The substance of the proposed resolution has been included in the notice for summoning the first general meeting.

The resolution has been passed in the first meeting by a majority of not less than three-fourths of the votes.

The subsequent general meeting has been called for and occurred not less than fourteen days and not more than six weeks after the former meeting.

The full text of the resolution passed in the first meeting has been included in the notice calling for the special meeting.

The resolution passed in the former meeting has been confirmed in the next meeting by a majority of not less than two-thirds of the votes.

Section 1195. If a general meeting has been called for or held or a resolution passed contrary to the provisions of this Title or contrary to the regulations of the company, the Court will upon application of any director or shareholder, cancel any such resolution or any resolutions passed at such irregular general meeting, given that the application is entered within one month after the date of resolution.

4. BALANCE SHEET

Section 1196. A balance-sheet must be created at least once every twelve months, and the cycle of such twelve months will signify the financial year of the company.

The balance sheet must detail a summary of the assets and liabilities of the company and a profit and loss account.

Section 1197. The balance-sheet must be scrutinized by one or more auditors and submitted for adoption to a general meeting within four months from its creation date.

A copy of it must be provided to every person entered in the register of shareholders at least three days prior to the general meeting.

Copies must also be kept open at the offices of the company during the same period for inspection by the holders of certificates to bearer.

Section 1198. On submitting the balance-sheet, the directors must prepare before the general meeting a report showing how the business of the company was conducted during the year under review.

Section 1199. Any person is entitled to retrieve from any company a copy of its latest balance-sheet on payment of a sum not exceeding twenty baht.

It shall be the obligation of the directors to send to the Registrar a copy of every balance sheet not later than one month after it has been adopted by the general meeting.

5. DIVIDEND AND RESERVE

Section 1200. The distribution of dividend must be done in proportion to the amount paid upon each share, unless otherwise agreed on with regards to preference shares.

Section 1201. No dividend may be declared except by a resolution voted on and passed in a general meeting.

The directors may occasionally pay to the shareholders such interim dividends as seem to the directors to be justified by the profits of the company.

No dividend shall be paid otherwise than out of profits. If the company has incurred losses, no dividend may be paid unless such losses have been made good.

Section 1202. The company must appropriate to a reserve fund, at each distribution of dividend, at least one-twentieth of the profits derived from the business of the company, until the reserve fund reaches one-tenth part of the capital of the company or such higher proportion thereof as may be declared in the regulations of the company.

If shares have been issued at a value higher than the face value, the excess must be added to the reserve fund until the latter has totaled the amount mentioned in the forgoing paragraph.

Section 1203. If dividend has been paid contrary to the provisions of the last two proceeding sections, the creditors of the company are allowed to have the amount so distributed returned to the company, given that a shareholder cannot be obliged to return dividend which he has been issued in good faith.

Section 1204. Notice of any dividend that may have been declared shall be either published twice at least in a local paper or provided by letter to each shareholder whose name is listed on the register of shareholders.

Section 1205. No dividend can bear interest against the company.

6. BOOKS AND ACCOUNTS

Section 1206. The directors must ensure true accounts are kept:

- (1) Of the sums received and expended by the company and of the matters in respect of which each receipt or expenditure occurs.
- (2) Of the assets and liabilities of the company.

Section 1207. The directors may ensure minutes of all proceedings and resolutions of meetings of shareholders and directors to be duly entered in the books which shall be located at the registered office of the company. Any such minutes signed by the chairman of the meeting at which such resolution were passed or proceedings had, or by the chairman of the next succeeding meeting, are thought to be correct evidence of the matters therein contained, and all resolutions and proceedings of which minutes have been made are thought to have been duly passed.

Any shareholder may at any time during business hours demand inspection of the above documents.