

Cancellation of a Shareholders' Resolution for an Improperly Called Meeting, An Analysis of Supreme Court Judgment No. 6555/2567

By Eksiam Chaisorn, Legal Consultant
Eksiam & Partners Co., Ltd.

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Laws and cases cited in this article

1. Civil and Commercial Code, Section 1172, paragraph one, the directors' power to call an extraordinary general meeting of shareholders
2. Civil and Commercial Code, Section 1195, the right of a director or shareholder to apply to the court to cancel a resolution of a general meeting
3. Civil and Commercial Code, Sections 1160 and 1161, quorum for board meetings, and board resolutions to be passed by majority
4. Civil and Commercial Code, Section 1162, summoning a meeting of the board of directors

Case law: Supreme Court Judgment No. 6555/2567 (Supreme Court, Commercial and Economic Cases Division; Black Case No. Phor Nor. 50/2566 (Thai: พณ.50/2566))



A common problem in companies whose shareholders are in conflict

In a limited company whose shareholders hold nearly equal stakes, for example 50:50 or 51:49, one side often wants to remove the other side's director from the board. Knowing that if a board meeting were actually called the opposing director would object or might simply not attend, that side instead sends each director a letter and asks them to "vote" on paper.

Supreme Court Judgment No. 6555/2567 answers this question clearly: that method is **unlawful**, and it makes the notice of meeting, the meeting itself, and the resolutions that follow unlawful as well, giving the court grounds to cancel them.

Facts of the case

The company (anonymized in the judgment as Company "Ch.") had 3 directors. The applicant held 25,000 shares, the first respondent held 24,999 shares, and the second respondent held 1 share, out of 50,000 shares in total. Instead of calling a board meeting to resolve to convene an extraordinary general meeting (EGM), the first respondent sent a letter dated 15 January 2020 (B.E. 2563) asking each director to mark "approve" or "disapprove" and return it within 7 days, with the results to be tallied on 23 January 2020.

The applicant received the letter but did not reply. The two respondents then treated this as a 2-of-3 majority resolution to call an extraordinary general meeting, which was held on 16 February 2020. At that meeting a resolution was passed removing the applicant as a director of the company.



Key timeline

Date	Event
15 Jan 2020	Letter sent asking each director to mark a vote, to be returned by 22 Jan
23 Jan 2020	"Majority resolution" to call an EGM declared, without any meeting actually being held
16 Feb 2020	EGM held, resolution passed removing the applicant as a director
Supreme Court	Judgment affirmed: the EGM and all of its resolutions cancelled

The principle laid down by the Supreme Court

The Supreme Court began with the text of Section 1172, paragraph one, which provides:

"The directors may summon extraordinary meeting whenever they think fit."

, Civil and Commercial Code, Section 1172, paragraph one (English text as published in the Thailand Law Library, library.siam-legal.com; unofficial translation)

Thai original: "กรรมการจะเรียกประชุมวิสามัญเมื่อใดก็ได้สุดแต่จะเห็นสมควร"

The Court held that the word "**directors**" in this section means the **board of directors** as a whole, not any single director. For the "board" to resolve to call an extraordinary general meeting, the following sequence must be followed:



Step	Action	Legal basis
1	Any director calls a meeting of the board of directors (the agenda should be stated clearly)	Section 1162
2	The directors meet, deliberate, and exchange views on calling the extraordinary general meeting	Section 1172, paragraph one
3	The board passes a resolution by a majority of the directors	Section 1161
4	Only then may the board call the extraordinary general meeting of shareholders	Section 1172

The heart of this principle is that, although the law does not prescribe the *form* a board meeting must take, a "meeting" necessarily means that the directors **deliberate together and exchange views** before voting. Sending each director a letter to vote individually, with no joint discussion, therefore does not meet the legal meaning of a "meeting".

Key passages from Supreme Court Judgment No. 6555/2567

The passages below are the Supreme Court's own words in the judgment, which can be cited directly in legal argument. (Unofficial translation; the Thai original follows each passage.)

Key passage 1, What a board "meeting" means

"It is a case in which the company's directors must jointly deliberate and exchange views on the matter to be considered before resolving whether or not to call an extraordinary general meeting of shareholders."

Thai original: "เป็นกรณีที่กรรมการของบริษัทต้องร่วมกันในการปรึกษาหารือและแลกเปลี่ยนความคิดเห็นกันเกี่ยวกับเรื่องที่จะประชุมก่อนลงมติว่าจะเรียกประชุมวิสามัญผู้ถือหุ้นหรือไม่"

, Supreme Court Judgment No. 6555/2567 (Commercial and Economic Cases Division)



Key passage 2, A circulated ballot ≠ calling a board meeting

"This was therefore not a summoning of a board meeting to resolve to call an extraordinary general meeting of shareholders, and no board meeting was held to deliberate on that matter. Accordingly, even though the applicant received a letter inviting a vote on calling an extraordinary general meeting of shareholders [...], it cannot be accepted that the board of directors lawfully summoned a meeting, met, and resolved to call the Extraordinary General Meeting of Shareholders No. 1/2563."

Thai original: "กรณีจึงมิใช่เป็นการนัดเรียกประชุมคณะกรรมการเพื่อลงมติให้มีการเรียกประชุมวิสามัญผู้ถือหุ้น ทั้งไม่มีการประชุมปรึกษาของคณะกรรมการในเรื่องดังกล่าว เช่นนี้ แม้ผู้ร้องจะได้รับหนังสือแจ้งให้ลงมติเพื่อเรียกประชุมวิสามัญผู้ถือหุ้น [...] ก็ไม่อาจรับฟังได้ว่าเป็นการนัดเรียกประชุม การประชุม และการลงมติของคณะกรรมการให้เรียกประชุมวิสามัญผู้ถือหุ้น ครั้งที่ 1/2563 โดยชอบ"

, Supreme Court Judgment No. 6555/2567 (Commercial and Economic Cases Division)

Key passage 3, A regular monthly meeting is not a meeting under Section 1172

"The notice fixing that date was merely an estimate of the date of a board meeting, since the meeting could still be postponed or cancelled, and it concerned the general management of the company; it cannot be taken to include a meeting of the board to resolve to call an extraordinary general meeting of shareholders as the law requires under Section 1172, paragraph one."

Thai original: "ประกาศกำหนดวันนัดดังกล่าวเป็นเพียงประมาณการวันนัดประชุมคณะกรรมการเท่านั้น เพราะยังอาจมีการเลื่อนหรืองดประชุมได้ ทั้งเป็นการประชุมเกี่ยวกับการบริหารงานทั่ว ๆ ไปของบริษัท ไม่อาจหมายความว่า รวมถึงการประชุม คณะกรรมการเพื่อ มีมติ เรียกประชุมวิสามัญ ผู้ถือหุ้น ตามที่กฎหมายกำหนดไว้ในมาตรา 1172 วรรคหนึ่ง"

, Supreme Court Judgment No. 6555/2567 (Commercial and Economic Cases Division)



Key passage 4, The defect taints every subsequent resolution

"Once the majority resolution of the board of directors to call the Extraordinary General Meeting of Shareholders No. 1/2563 was contrary to the law and to the company's articles of association, the notice calling the Extraordinary General Meeting of Shareholders No. 1/2563, together with the meeting and the resolutions that followed from it, was likewise unlawful. There are therefore grounds to cancel the extraordinary general meeting of shareholders and the resolutions of that meeting."

Thai original: "เมื่อมติคณะกรรมการเสียงข้างมากที่ให้เรียกประชุมวิสามัญผู้ถือหุ้น ครั้งที่ 1/2563 ไม่ชอบด้วยกฎหมายและข้อบังคับของบริษัทแล้ว ย่อมทำให้การนัดเรียกประชุมวิสามัญผู้ถือหุ้น ครั้งที่ 1/2563 ตลอดจนการประชุมและการลงมติที่ได้ดำเนินการต่อเนื่องมาเป็นการไม่ชอบด้วยเช่นกัน กรณีจึงมีเหตุให้เพิกถอนการประชุมวิสามัญผู้ถือหุ้นและมติที่ประชุมผู้ถือหุ้น"

, Supreme Court Judgment No. 6555/2567 (Commercial and Economic Cases Division)

Legal consequence: the defect flows through to every subsequent step

The Supreme Court held that once the originating board resolution was unlawful, the notice of meeting, the meeting, and the resolutions that followed from it were unlawful as well, as the diagram below shows.

The full chain of legal consequences

Unlawful board resolution → unlawful notice of the EGM → unlawful EGM → **resolution removing the director cancelled**

Using the judgment as a precedent: when does it apply?

Supreme Court Judgment No. 6555/2567 can be cited as a precedent in the following situations.



Situation	How to use this judgment
You receive a letter asking you to vote on calling an EGM, without any board meeting actually being called	Argue that the process is unlawful under Section 1172 of the Civil and Commercial Code and this judgment, in order to object before the meeting or apply for cancellation after the meeting
You intend to apply to the court to cancel a resolution of a general meeting under Section 1195 of the Civil and Commercial Code	Cite this judgment in the application to show that the court has cancelled resolutions in the same circumstances before
The other side argues that "the board already holds a regular monthly meeting", so a board meeting was duly held	Cite this judgment: a general management meeting cannot be treated as a meeting to resolve to call an EGM under Section 1172
You want to set up the procedure for calling an EGM correctly from the start	Use this judgment as a checklist to confirm that your own steps meet what the court requires

How to cite this judgment

When citing this judgment in a legal letter, an objection, or an application to the court, identify it as follows.

Supreme Court Judgment No. **6555/2567**

Supreme Court, Commercial and Economic Cases Division, Black Case No. Phor Nor. 50/2566 (Thai: พณ.50/2566)

Source: Supreme Court judgment database, deka.supremecourt.or.th

Ratio decidendi: "For the board of directors to resolve to call an extraordinary general meeting of shareholders under Section 1172, paragraph one, of the Civil and Commercial Code, the company's directors must jointly deliberate and exchange views on the matter to be considered before voting. Sending the directors a letter to vote, without a board meeting being called and without joint deliberation, does not constitute a lawful meeting and resolution of the board."



Thai original: "การที่คณะกรรมการจะมีมติเรียกประชุมวิสามัญผู้ถือหุ้นตาม ป.พ.พ. มาตรา 1172 วรรคหนึ่ง กรรมการของบริษัทต้องร่วมกันในการปรึกษาหารือและแลกเปลี่ยนความคิดเห็นกันเกี่ยวกับเรื่องที่จะประชุมก่อนลงมติ การส่งหนังสือให้กรรมการลงมติโดยไม่มีการนัดเรียกประชุมและปรึกษาหารือร่วมกัน ไม่ถือเป็นการประชุมและการลงมติของคณะกรรมการโดยชอบ"

What if the directors on one side refuse to attend?

A frequent question is whether, once a board meeting has been called, the directors present can still pass resolutions if the directors on the other side refuse to attend. The answer is **yes, provided a quorum is present**. That is, notice of the board meeting must first be duly given, within the period required by the company's articles of association (if any). If the directors on one side *receive the notice but choose not to attend*, the directors who do attend may pass resolutions as long as their number constitutes a quorum. The quorum for board meetings is as fixed by the company's articles of association or by the board itself under Section 1158 and Section 1160. Where nothing has been fixed and the company has more than three directors, three directors must be present; for a company with three directors or fewer, Section 1160 fixes no number, so the articles should be checked on quorum before the meeting is called. Once a quorum is present, decisions are taken by majority under Section 1161.

The crucial difference from the case discussed here is that where directors "do not attend", a meeting was in fact "called"; in the case decided by Judgment No. 6555/2567, no meeting was "called" at all. They are therefore two different situations.

The right to apply for cancellation under Section 1195: a deadline to watch

A shareholder harmed by a resolution passed through an unlawful process may apply to the court to cancel that resolution under Section 1195 of the Civil and Commercial Code, but the application must be made **within one month from the date of the resolution**. Section 1195 provides: "If a general meeting has been summoned or held or a resolution passed contrary to the provisions of this Title or contrary to the regulations of the company, the Court shall, on



application of any shareholder or director, cancel any resolution passed at such irregular meeting, provided that the application is entered within one month after the date of the resolution." (English text as published in the Thailand Law Library; unofficial translation.) The period therefore runs from the date of the resolution, even if the applicant learns of the resolution only later.

Thai original: มาตรา 1195 "การประชุมใหญ่นั้น ถ้าได้ นัด เรียก หรือ ได้ ประชุม กัน หรือ ได้ ลงมติ ฝ่าฝืน บทบัญญัติในลักษณะนี้ก็ดี หรือฝ่าฝืนข้อบังคับของบริษัทก็ดี เมื่อกรรมการหรือผู้ถือหุ้นคนหนึ่งคนใดร้อง ขึ้นแล้ว ให้ศาลเพิกถอนมติของที่ประชุมใหญ่อันผิดระเบียบนั้นเสีย แต่ต้องร้องขอภายในกำหนดเดือนหนึ่ง นับแต่วันลงมตินั้น"

Warning: the 1-month deadline

If no application is filed within the deadline, an unlawful resolution may become legally binding, seek legal advice promptly as soon as you learn of a meeting that may have been unlawful.

When to seek advice

Situations that call for immediate advice

- You have received a letter asking you to vote on calling an EGM without any board meeting actually being called
- An EGM has been held and has passed a resolution affecting your rights in the company
- You want to call an EGM correctly so that its resolutions cannot be cancelled later
- There is a dispute between the shareholders or the directors of your company

Eksiam Chaisorn, a legal consultant whose practice covers partnership, company and business law, can advise both on setting up a legally correct procedure before you act and on protecting shareholders' rights once a dispute has arisen.



Key takeaways and how to apply them

- "Directors" in Section 1172 of the Civil and Commercial Code = *the board of directors*, which must resolve collectively, not a single director
- Before an EGM is called, the board must first *call a meeting + deliberate + resolve*
- Sending individual ballots by letter without an actual meeting = unlawful, per Judgment No. 6555/2567
- A regular monthly meeting ≠ a meeting held specifically to resolve to call an EGM
- An unlawful board resolution makes every subsequent step unlawful and gives the court grounds to cancel them
- An application to cancel a resolution under Section 1195 must be made *within one month from the date of the resolution*

