

Supreme Court Judgment No. 6555/2567: A Resolution to Call an EGM Requires a Board Meeting First, Voting by Letter Is Not Enough

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Laws 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 passed by majority
4. Civil and Commercial Code, Section 1162, summoning a meeting of the board of directors

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



Overview of the case and the facts

This is an important case in which the Supreme Court, Commercial and Economic Cases Division, ruled on "how a company's board of directors must pass a resolution to call an extraordinary general meeting of shareholders", in particular, whether the directors may pass such a resolution through an exchange of letters without an actual meeting being called.

In summary, Company "Ch." (anonymized in the judgment) had 3 directors, holding 25,000 shares (the applicant), 24,999 shares (the first respondent), and 1 share (the second respondent), for a total of 50,000 shares. When the first respondent wanted to call an extraordinary general meeting to remove the applicant as a director, instead of calling an actual board meeting the first respondent sent each director a letter asking them to mark "approve" or "disapprove" and return it by a set date.



Key events in the case

Date	Event
15 January 2020 (B.E. 2563)	The first respondent sent the directors a letter asking them to vote approve/disapprove, to be returned by 22 January
22 January 2020 (B.E. 2563)	Deadline for returning the voting letter, the applicant received the letter but did not reply
23 January 2020 (B.E. 2563)	The two respondents concluded that there was "a 2/3 majority resolution" to call an extraordinary general meeting
3 February 2020 (B.E. 2563)	Notice of the extraordinary general meeting sent, and published in a newspaper
16 February 2020 (B.E. 2563)	Extraordinary General Meeting No. 1/2563 held, resolution passed removing the applicant as a director

The legal issue before the Court

The central issue was whether a board resolution "passed" by returning letters, with no meeting called and no joint deliberation, is a valid resolution under Section 1172, paragraph one, of the Civil and Commercial Code.

The provision at the heart of the case is 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: "กรรมการจะเรียกประชุมวิสามัญเมื่อใดก็ได้แต่จะเห็นสมควร"

The Court held that the word "**directors**" in this section means the **board of directors**, not any individual director, and that for the board to call an extraordinary general meeting it must go through 2 steps: (1) a board meeting must first be called, and (2) the resolution must be passed by a majority vote under Section 1161.

The Supreme Court's reasoning: why a vote by letter is not enough

The Supreme Court explained the principle clearly: although neither the law nor the company's articles of association prescribe the *form* of a board meeting, the very meaning of the word "meeting" leads to the conclusion that:

Key principle from the judgment:

"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." (unofficial translation)

Thai original: "เป็นกรณีที่กรรมการของบริษัทต้องร่วมกันในการปรึกษาหารือและแลกเปลี่ยนความคิดเห็นกันเกี่ยวกับเรื่องที่จะประชุมก่อนลงมติว่าจะเรียกประชุมวิสามัญผู้ถือหุ้นหรือไม่"

The procedure used by the first respondent, sending each director a letter to mark approve/disapprove and return it, therefore lacked two essential elements:

First, no **board meeting was called** to resolve specifically on this matter: the letter merely asked each director to "vote" individually and send it back; it was not a summons to meet or to confer. Second, there was no **deliberation or exchange of views**, which is the essence of a meeting, because a "meeting" in the legal sense must give the directors the opportunity to receive information, ask questions, and argue their positions before voting.



The respondents' arguments, and why the Court rejected them

The two respondents argued that 23 January 2020 (B.E. 2563) was the company's "regular monthly meeting date", the company having fixed a meeting on the 23rd of every month from November 2019 (B.E. 2562) onward, so that a board meeting had in fact been duly held.

The Supreme Court rejected this argument for two reasons. First, the announcement of a meeting on the 23rd of each month was only an *estimate*, since a meeting could still be postponed or cancelled. Second, the monthly meeting was a meeting for the *general management* of the company; it could not be taken to include a meeting to resolve to call an extraordinary general meeting of shareholders under Section 1172, paragraph one.

Outcome of the case and its legal consequences

Once the board resolution to call Extraordinary General Meeting No. 1/2563 was unlawful, the Supreme Court held that the notice of the extraordinary general meeting of shareholders, and the meeting and resolutions that followed from it, were likewise unlawful, as follows:

Step	Legal effect
Board resolution to call the extraordinary general meeting (23 January 2020, B.E. 2563)	Unlawful
Notice calling Extraordinary General Meeting No. 1/2563	Unlawful
Extraordinary general meeting of shareholders (16 February 2020, B.E. 2563)	Cancelled
Resolution removing the applicant as a director	Cancelled

The Court of Appeal Region 1 had reversed the lower court and cancelled that extraordinary general meeting; the Supreme Court agreed with the judgment of the Court of Appeal Region 1 and affirmed it. The two respondents' appeal to the Supreme Court failed.



Practical lessons for directors and shareholders

The judgment offers clear lessons for running a limited company, especially where the shareholders are in conflict: following the legally correct procedure at every step is of the utmost importance.

Steps to take before calling an extraordinary general meeting of shareholders

- **Call a board meeting** specifically for this agenda item, stating the agenda clearly in the notice of the meeting
- **Give every director the opportunity to deliberate** and exchange views before voting, not a "polling" vote on paper
- **Keep complete minutes of the board meeting**, recording the attendees, the agenda, the discussion, and the result of the vote
- **The resolution must be passed by a majority** of the directors present, under Section 1161
- **Check the company's articles of association** for any additional special requirements

Where one side's directors refuse to attend

The problem in this case arose because the first respondent chose a vote by letter instead of calling an actual meeting. In law, if one side's directors are duly served with notice of a board meeting but *do not attend*, the directors who do attend may pass resolutions once a quorum is present. The quorum for board meetings is as fixed by the company's articles of association or by the board under Section 1158 and Section 1160; if none is fixed and the company has more than three directors, three directors must be present to form a quorum. For a company with no more than three directors, such as the company in this case, Section 1160 fixes no number, so the articles should be checked on quorum before the meeting is called. Once a quorum is present, resolutions are passed by majority under Section 1161, and, crucially, there must be an actual "meeting", not a vote by letter.



Shareholders' right to apply for cancellation of a resolution: Section 1195

In this case the applicant exercised the right under Section 1195 of the Civil and Commercial Code to apply to the court to cancel the resolution of the meeting. 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 one-month period therefore runs from the date of the resolution, not from the date on which the applicant learned of it.

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

This right is vitally important for shareholders who have been treated unfairly or subjected to an improper procedure, because if no application is made within the time limit, an irregular resolution may become binding in law.

When to seek legal advice

Situations in which you should seek advice

- You have received a letter asking you to vote on calling an extraordinary general meeting of shareholders without any board meeting being called
- An extraordinary general meeting has been held of which you were not notified, or not properly notified
- A shareholders' resolution has been passed that may affect your rights in the company
- You wish to call an extraordinary general meeting to consider removing a director
- There is a dispute between the shareholders or directors of your company



Eksiam Chaisorn, a legal consultant whose practice covers partnership, company and business law, is available to advise both on planning the legally correct procedure before you act and on protecting shareholders' rights when a dispute arises.

Key points from Supreme Court Judgment No. 6555/2567

- The word "directors" in Section 1172, paragraph one, of the Civil and Commercial Code means the *board of directors*, not a single director
- Before an extraordinary general meeting is called, there must first be a *board meeting* to deliberate and pass the resolution
- Sending the directors a letter to vote individually, with no actual meeting, *does not constitute* a board meeting in law
- An unlawful board resolution makes the notice of meeting, the extraordinary general meeting, and the resolutions that follow unlawful as well
- A director or shareholder may apply to the court to cancel the resolution under Section 1195 of the Civil and Commercial Code within one month from the date of the resolution

