



30 Years

Serving the
Business
Community



OUR ACHIEVEMENT

"SMD recently acted as the lead law firm for the Sellers of testing equipment company Smartest with offices in Hong Kong and Thailand in a highly publicized sale to New Zealand technology company Quantifi Photonics Ltd. The deal successfully closed"

SMD EVENT HIGHLIGHT

Mike Doyle, Senior Partner of Seri Manop & Doyle, led the Fundamentals of Joint Ventures and Mergers & Acquisitions in Southeast Asia Post Covid workshop on March 24-25 at Sasin School of Management.

Sasin | Executive Education

Fundamentals of
**Joint Ventures and
Mergers & Acquisitions in
Southeast Asia Post Covid**

**Last
Chance!**
Apply by
March 10!

March 24 - 25, 2022
Two-day in-person
workshop

Mike Doyle
U.S. Attorney
Senior Partner, Seri Manop & Doyle
Visiting Professor, Sasin School of Management

SET *Seri Manop & Doyle*

Monthly Webinar Series: **FOREIGN INVESTMENT REGULATION IN THE REGION POST COVID**

- Updates on Foreign Investment Regulation in the Region
- Latest Government Incentives Available
- Best Practices and Avoiding Problem Areas
- Effective Investment Structures Available

MODERATORS

MIKE DOYLE
Senior Partner of Seri Manop & Doyle

SIRIDA NAGADATIA
Assistant Managing Partner of Seri Manop & Doyle

REGISTER

Upcoming

VIETNAM	March 3, 2022	INDONESIA	April 7, 2022
INDIA	10:00 - 12:00	CHINA	10:00 - 12:00

LEE YING YING
Partner of Kelvin Chia Partnership

ANGGIA RUKMASARI
Founding Partner of Legalexica

RAVI SINGHANIA
Managing Partner of Singhanian & Partners

JIANG JIANG
Partner of Hylands Law Firm

MALAYSIA	May 5, 2022	CAMBODIA	June 2, 2022
MYANMAR	13:30 - 15:30	PHILIPPINES	10:00 - 12:00

DATO' AZMI MOHD ALI (DJMK)
Senior Partner of Azmi & Associates

PEDRO JOSE F. BERNARDO
Principal of Kelvin Chia Partnership

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Principal of Kelvin Chia Partnership

ERIC RECALDE
Partner of ACCRALAW

For more details, please contact us at: CorporateAccess&EnterpriseServiceDepartment@set.or.th

Monthly Webinar Series by Seri Manop & Doyle in collaboration with the Stock Exchange of Thailand (SET) on "Foreign Investment Regulation in the Region Post COVID"

Download Presentation Materials



Watch the Webinar on SET Youtube



SMD INSIGHTS

We have recently authored an article with The American Chamber of Commerce in Thailand (AMCHAM Thailand) where we discussed how much protection can be afforded to minority shareholders in Thai companies.

Read more: <https://www.amchamthailand.com/t-ab-magazine/>

LEGAL UPDATE

Minority Shareholder Protection in Thai Companies

Mike Doyle, Sathima Chintanaseri, and Pakdeenad Supradit N Ayudhya, Seri Manop & Doyle



Under Thai law, many categories of business activities are reserved for majority Thai held companies only. Therefore, one key issue for foreign investors in such companies is how to adequately protect their rights as a minority shareholder.

Every company needs to be able to operate as efficiently as possible to be competitive in the marketplace which normally means majority rule decisions in shareholders and board of directors' meetings. However, from the standpoint of a foreign minority shareholder, it is also very important that mechanisms and safeguards are in place in order that their rights are adequately protected against a potentially overreaching majority shareholder.

A degree of statutory protection is already afforded to minority shareholders holding 25% or more of the total shares of the company by way of requiring a super majority (75% share approval) for company actions. The matters required by law to be passed by a super majority are as follows. (Section 1194 of Thailand Civil and Commercial Code, hereinafter CCC)

- To alter the provisions of memorandum of a company.
- A reduction/increase of a company's share capital.
- A merger/consolidation of a company.

Winding up of the company. However, in addition to the above statutory protection, many times foreign minority investors will also attempt to implement additional protections as follows. These rights can be categorized into two types:

Economic Right

Rights of shareholders related to exit from a company, such as tag-along right. If controlling shareholders wish to transfer their shares to a third-party purchaser, those of non-controlling shareholders will be entitled to collectively sell their respective shares on a pro-rata basis on the same per share price as the majority shareholder. This mechanism is in place to protect minority shareholders from being the remainders when those with controlling interests make the transition of ownership to other business. In the absence of tag-along right, the selling price of the minority shareholder would be pressured at substantially lower than their actual value.

Control Right

The shareholders' meeting has control of the Board of Directors, meaning that the company's directors may be removed by virtue of the resolution of the shareholders' meeting at any time. Minority shareholders should attempt to secure a right in the company articles of association to nominate

at least one director as their representative in a key executive position such as the Chief Financial Officer (CFO).

As far as the approval quorum is concerned, the presence of minority shareholder at the shareholders' meeting is recommended to constitute the meeting quorum. Moreover, it is vital that a resolution of significant matters should require affirmative votes of minority shareholders, for example, the reserved matter shall be passed by not less than 80% to 100% of the total votes of shareholders present at the meeting. Such significant matters shall be stipulated in the company's articles of association and/or shareholder agreement. The highlight of the reserved matters is, for example, any matter

that requires special resolution as prescribed by the CCC, such as borrowing, or obtaining credit facility, entering into any transaction that causes a company to incur indebtedness, engaging in high value transaction, sale, or transfer, revoking the license in operating company's business, and any procedures or transaction that might cause the proportion of the minority shareholder's shares to be diluted.

In addition to providing minority shareholder additional protection, the above stated minority protection mechanisms may also have the additional benefit of increasing the company's ability to raise capital due to its good corporate governance and boosting investor confidence. ■



Mike Doyle is a U.S. attorney and a senior partner. He represents multinational companies, private equity and funds.



Sathima Chintanaseri is a partner at Seri Manop and Doyle. Her expertise includes corporate and commercial law, estate planning and succession.



Pakdeenad Supradit N. Ayudhya is an associate specializing in commercial law and litigation. She advises on business formation.