

Public hearing document

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Investment Governance Code: I Code  
for  
Institutional Investors

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Please submit written comments or suggestions to

email: [praneelk@sec.or.th](mailto:praneelk@sec.or.th)

Facsimile 662-695-9912

Comments are welcomed until October 31, 2016

For more information, please contact:

- |    |                         |              |
|----|-------------------------|--------------|
| 1. | Ms. Pranee Leksrisakul  | 662-695-9542 |
| 2. | Ms. Thanikul Sawaengsri | 662-263-6033 |

Thank you for your comments.



The Securities and Exchange Commission, Thailand  
333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak, Bangkok 10900,  
Thailand

## Preamble

### 1. Application of the Investment Governance Code

The Investment Governance Code (“I Code”) is a voluntary code that applies to Institutional Investors who have become signatories. The I Code provides guidelines for the effective exercise of investment duties and stewardship responsibilities by Institutional Investors to further the best interest of clients, and operate as a market force for strengthening investment governance and promoting Environmental, Social, and Corporate Governance (ESG) of listed companies. Effective stewardship by Institutional Investors benefits investors, beneficiaries, investee companies and other stakeholders, and supports the sustainable growth of the Thai capital market and economy as a whole.

This I-Code set out herein are in line with relevant international standards and practices. The I Code does not replace or amend the applicable legal obligations of Institutional Investors or the regulatory requirements applicable to them, including those concerning fiduciary duties and disclosure.

#### 1.1 Institutional Investors

The I Code applies to Institutional Investors who have become signatories as follows:

- (1) Asset Management Companies;
- (2) Asset Owners; and
- (3) Related Service Providers.

Asset Owners may directly apply their commitment to this Code and the Principles set forth herein to Investee Companies or indirectly through the mandate provided to Asset Management Companies.

Institutional Investors may outsource some of their stewardship activities to Relevant Service Providers but cannot delegate their stewardship responsibilities and must ensure they are carried out in accordance with their level of commitment to this Code.

#### 1.2 Funds covered by the I Code

The I Code can be applied to any kind of fund (active or passive), including mutual funds, private funds and provident funds.

## 2. Definitions

**Asset Management Companies** are SEC-licensed agents that are responsible for managing funds on behalf of their clients and Asset Owners through an investment mandate and generate returns for them.

**Asset Owners** are organizations who pool funds of clients in collective investment vehicles. Asset Owners include Government Pension Funds, Social Securities Funds, Insurance companies, Provident Funds, etc.

**Institutional Investors** are Asset Owners, Asset Management Companies and Related Service Providers with or responsible for equity holdings in corporations listed on the Stock Exchange of Thailand as defined in the *“Notification of the Securities and Exchange Commission No. KorChor. 9/2555 Re: Determination of Definitions of Institutional and High Net Worth Investors”*.

**Clients** are unit holders, Asset Owners, beneficiaries and ultimate beneficiaries.

**Investee Companies** are corporations listed on the Stock Exchange of Thailand.

**Related Service Providers** include fund supervisors, (sub-) custodians, proxy advisers, investment consultants and trustees who are agents with responsibility for the maintenance and safekeeping of the records of the Asset Owners' and Asset Management Companies' assets, or who undertake functions mandated by Asset Owners and Asset Managers to support their activities.

**Stewardship** refers to investor stewardship from the perspective of a long-term Institutional Investor. Stewardship requires the Institutional Investor to look after and maintain oversight over its investments in Investee Companies so as to promote the sustainable and long-term growth and success of companies in such a way that the ultimate providers of capital obtain durable returns on their investments. Institutional Investor stewardship responsibilities include the adoption and application of an investment governance policy, management of conflict of interests and oversight of agents, active monitoring of Investee Companies, active use of voting rights in Investee Companies and collaboration with other investors and stakeholders in Investee Companies, disclosure of reporting on the discharge of the Institutional Investor's stewardship responsibilities.

## 3. Benefits of the I Code for Institutional Investors

Investment governance codes or stewardship codes have been internationally recognized as important tools for strengthening Institutional Investors' competitiveness in the domestic and global markets, promoting listed companies' responsible and sustainable business operation in line with environmental, social and corporate governance (ESG) criteria, and providing long-term

sustainable returns to clients of Institutional Investors while gaining and maintaining their confidence and trust.

In addition, leading international organizations, including those representing Institutional Investors globally (such as the International Corporate Governance Network (ICGC)), have promulgated principles for investment governance, such as the United Nations-supported Principles for Responsible Investment and the ICGC Statement of Principles for Institutional Investor Responsibilities, and urged the private and public sector to ensure their implementation.

#### **4. The Principles of the I Code**

The I Code consists of seven Principles:

- Principle 1: Clear Written Investment Governance Policy.
- Principle 2: Conflict of Interest Management.
- Principle 3: Informed Decision-making on basis of Business and ESG Performance of Investee Companies and Active Ongoing Monitoring.
- Principle 4: Enhanced Monitoring of and Engagement with Investee Companies, as Appropriate.
- Principle 5: Disclosure of Voting Policy and Voting Result.
- Principle 6: Collaboration with Other Investors and Stakeholders (Collective Engagement).
- Principle 7: Regular Disclosure of Investment Governance Policy and Compliance.

#### **5. Role of Institutional Investors**

Pursuant to the Principles set out in the I Code, Institutional Investors are expected to continue their practice of disclosure of voting policy and results, and management and disclosure of conflicts of interest. As a result of the introduction of the I Code, Institutional Investors are expected to extend their investment governance practices by creating and implementing an Investment Governance policy and actively monitoring the business and ESG performance of Investee Companies in order to ensure early intervention to actively manage risk factors that may have an impact on the Institutional Investors and their clients.

In the event of identified risk factors at the Investee Companies that could negatively impact investments, and to further the best interest of their clients, Institutional Investors may enhance

monitoring of and engage Investee Companies by, for instance, notifying the Investee Companies, requesting meetings with independent directors or the Audit Committee, exercising voting rights, and collaborating with other investors in the Investee Company as appropriate.

## **6. Declaring and Reporting under the I Code**

### **6.1 Declaration of Intent for I Code**

All Institutional Investors can become signatories to the voluntary I Code by filing a Declaration of Intent to comply with the I Code. The Chairman of the Board of Directors of Institutional Investors may submit the Declaration of Intent to the Office of the Securities and Exchange Commission of Thailand (SEC). The SEC will publicly disclose the list of Institutional Investors who have submitted a Declaration of Intent to comply with the I Code on the SEC's website. In addition, Institutional Investors are expected to publicly disclose their Declarations of Intent in relation to the I Code, including on their websites.

Institutional Investors who are regulated by the SEC and who do not wish to become a signatory to the I Code are required to disclose this with reasons on their website or in their annual report, pursuant to applicable laws and regulations.

Institutional Investors are encouraged to become signatories to and implement the I Code upon it becoming effective.

### **6.2 Compliance**

After becoming a signatory through the filing of a Declaration of Intent of compliance with the I Code, all Institutional Investors are expected to implement the Principles set out in the I Code commensurate with their business profile (including size and structure) and their role in the investment chain.

### **6.3 Reporting and Disclosure of Information (Comply or Explain)**

All Institutional Investors who are signatories to the I Code are expected to disclose their level of I Code compliance for each of the Principles on a "Comply or Explain" basis in their annual reports and/or on their companies' websites. All Institutional Investors are requested to notify the SEC electronically of their I Code disclosures and any updates thereto with the inclusion of a URL link to their I Code disclosures (or any updates) on their websites or in their annual reports.

Further, Institutional Investors regulated by the SEC who are signatories to the I Code, such as Asset Management Companies, are required to report their level of I Code compliance for each of the Principles on a "Comply or Explain" basis to the SEC pursuant to applicable laws and

regulations. Institutional Investors regulated by the SEC are required to notify the SEC electronically of their I Code disclosures and any updates thereto with the inclusion of a URL link to or PDF of their I Code disclosures (or any updates) on their websites or in their annual reports.

“Comply or Explain” means that for each Principle that the Institutional Investor who is a signatory to the I Code declares not to be in compliance with the I Code, the Institutional Investor have to disclose reasons and explain non-compliance on its website or in its annual report with reference to its business profile and role in the investment chain.

## 7. Timeframe for I Code Implementation

The SEC Office has set the timeframe for I Code implementation as follows:



Principle 1:

Institutional Investors should adopt a clear written Investment Governance Policy.

**Principle 1.1**

An Institutional Investor should adopt a clear, written Investment Governance Policy incorporating the Principles set out in this I Code and setting out its stewardship activities commensurate with its business profile (including size and structure) and its role in the investment chain, and how it will discharge related duties and responsibilities. The Investment Governance Policy should require the Institutional Investor to perform its investment duties and stewardship responsibilities in the best interest of clients, by making sound investment decisions, and effectively monitoring the investments and business and ESG performance of Investee Companies to ensure durable returns for its clients.

**Principle 1.2**

Investment Governance Policy should at cover the following topics as appropriate:

- 1.2.1 Conflicts-of-interest management;
- 1.2.2 Informed Decision-making on the basis of business and ESG performance of Investee Companies and active ongoing monitoring of investments;
- 1.2.4 Enhanced monitoring of and engagement with Investee Companies on identified issues of concerns that may have a material impact on investments and the best interest of clients;
- 1.2.4 Disclosure of voting policy and the results of exercising voting rights in Investee Companies;
- 1.2.5 Collaboration with other investors as appropriate;
- 1.2.6 Disclosure of the Investment Governance Policy and information about the level of compliance with the Policy and the I Code, and how Institutional Investors apply the Principles of this I Code.

**Principle 1.3**

The Investment Governance Policy should specify that Institutional Investors must discharge their duties in compliance with applicable laws, regulations, client agreements, in the best interest of their clients, and with the application of sound investment governance practices. The Investment

Governance Policy should require the adoption of clear policies and measures in relation to the following topics:

- 1.3.1 Inclusion of an Investee Company's ESG performance in the Institutional Investor's investment decision criteria.
- 1.3.2 Anti-corruption measures of both the Institutional Investor and Investee Companies with reference to legal and industry requirements.
- 1.3.3 Management and use of non-public information about or related to Investee Companies and their securities which may have a material effect on the price of an Investee Company's securities.
- 1.3.4 Prevention of unfair securities trading practices in violation of applicable laws and regulations.
- 1.3.5 Prevention of money laundering and terrorist financing.

**Principle 1.4**

Institutional Investors should publicly disclose their Policy on their website and/or in their annual report, and communicate and promote the Policy to other Institutional Investors within the investment chain. Institutional Investors should select Related Service Providers who perform their activities consistent with the said Policy.

**Principle 1.5**

Where an Institutional Investor outsources its stewardship duties and responsibilities, the Institutional Investor should monitor the discharge of these duties and responsibilities to ensure that they are carried out consistent with the Policy.



## Principle 2:

Institutional Investors should properly prevent and manage conflicts of interest and prioritize advancing the best interest of the client.

### Principle 2.1

Institutional Investors should adopt a robust conflicts of interest policy aimed at preventing conflicts of interests and establishing systems and controls that allow them to identify, minimize and properly manage such conflicts should they arise.

The Board of Directors of an Institutional Investor should monitor and ensure compliance with the Policy. At a minimum the Board of Directors of an Institutional Investor should ensure the following circumstances:

2.1.1 Organization structure with systems and controls that enable the Board of Directors and the Executives of the Institutional Investor to ensure that investments are managed in the best interest of clients, that conflicts of interest are prevented, identified, minimized and properly managed, and that the interests of clients are prioritized over the interests of the Institutional Investor and its shareholders and business group companies.

2.1.2 An organization culture which emphasizes and prioritizes creating durable investment returns for clients, including through adopting of a Statement of Corporate Values.

2.1.3 Employing knowledgeable and capable staff and implementing an employee compensation architecture, motivation scheme, and evaluation process that support the objectives in 2.1.1 and 2.1.2.

### Principle 2.2

To ensure that adequate measures to prevent, identify, minimize and manage conflicts of interest are in place, Institutional Investors should at least have the following:

2.2.1 Written policies for the prevention, identification, minimization and management of conflicts of interests pursuant to a risk-based approach.

2.2.2 Procedures to sufficiently prevent, identify, minimize and manage conflicts of interest pursuant to a risk-based approach.

2.2.3 Staff communication and training to ensure understanding and effective application of conflict of interest procedures.

2.2.4 Compliance control and audit measures for the application of the conflict of interest policies and procedures.

2.2.5 An effective whistle-blowing policy.

2.2.6 Regular review of the appropriateness and effectiveness of conflict of interest measures

### **Principle 2.3**

Institutional Investors should communicate with their Related Service Providers and encourage them to disclose conflict of interest matters that may arise in connection with their providing the services. In addition, the Related Service Providers should be encouraged to set up sufficient measures to handle such conflicts of interest to the extent that the Institutional Investors and their clients are best served by the Related Service Providers.

Principle 3:

Institutional Investors should make informed investment decisions and engage in active ongoing monitoring of the Investee Companies.

**Principle 3.1**

Institutional Investors should have in place processes and procedures for active ongoing monitoring of Investee Companies to ensure that they can follow the business and ESG performance of the Investee Companies and become promptly aware of factors relevant to the value of the Investee Companies.

**Principle 3.2**

In the process of investment decisions and monitoring of investments, Institutional Investors should at a minimum do the following:

3.2.1 Monitor the performance of the Investee Companies.

3.2.2 Monitor identified internal and external factors relevant to the value of the Investee Companies.

3.2.3 Satisfy themselves that the leadership and corporate governance of the Investee Companies is effective.

3.2.4 Ensure that the Board of Directors (and sub-committees) of the Investee Companies perform their duties in accordance with ESG principles, leading to sustainable growth of the Investee Companies and durable returns on investment.

3.2.5 Consider the quality of the Investee Company's reporting and information disclosure.

### Principle 3.3

Investment decisions should take into consideration the commitment of Investee Companies to ESG principles, as follows:

Corporate Governance	Social Responsibility	Environment
<ul style="list-style-type: none"> <li>● Board of Directors structure including size, composition, and the proportion of independent directors</li> <li>● Structure of subcommittees, including the Audit Committee</li> <li>● Compensation architecture for Directors and Executives</li> <li>● Conduct of directors and Executives</li> <li>● Internal control and risk management</li> </ul>	<ul style="list-style-type: none"> <li>● Responsibility towards clients/consumers/stakeholders and product safety</li> <li>● Fair treatment of employees</li> <li>● Strengthening the community</li> <li>● Responsibility towards business partners</li> <li>● Fair competition</li> <li>● Business opportunities through innovation</li> <li>● Anti-fraud &amp; anti-corruption</li> </ul>	<ul style="list-style-type: none"> <li>● Prevention of environmental pollution</li> <li>● Sustainable use of resources, incl. energy and water</li> <li>● Identification, disclosure and mitigation of risk resulting from global warming, i.e. GHG emissions and targets</li> <li>● Waste management</li> <li>● Environmental protection, incl. biodiversity and restoration of natural habitats</li> </ul>

### Principle 3.4

Institution Investors should actively monitor the business and ESG performance of Investee Companies commensurate with the nature of their investments in order to become promptly aware of factors relevant to the value of the Investee Companies and the investments, including risk factors. Such monitoring should include:

3.4.1 News and research analysis related to the Investee Companies and information disclosures by Investee Companies.

3.4.2 Effective engagement with the Board of Directors and the Executives of the Investee Companies, and

3.4.3 Attending and exercising voting rights at the Investee Companies' Annual General Meeting and Extraordinary General Meeting,

**Principle 3.5**

In the event that Investee Companies are found to have failed to comply with ESG principles, or other risk factors have been identified which may affect the value of the Investee Companies and the durable return on investments, the Institutional Investors should seek and carefully consider the explanations of the Investee Companies or the lack thereof and seek resolution by the Investee Companies of the matters identified. If the Institutional Investors consider the company's explanations, corrective measures, or reasons given insufficient, the Institutional Investors should enhance the monitoring activities in accordance with Principle 4.

#### Principle 4:

Institutional Investors should apply enhanced monitoring of and engagement with the Investee Companies if monitoring pursuant to Principle 3 is considered insufficient.

#### Principle 4.1

Institutional Investors should have a policy with guidelines that indicate when and how to apply enhanced monitoring of and engagement with the Investee Companies in the event regular monitoring measures under Principle 3 are deemed insufficient to resolve risk factors identified. Early intervention by Institutional Investors should assist in preserving and restoring the value of investment in the relevant Investee Companies.

#### Principle 4.2

Events that warrant enhanced monitoring by Institutional Investors include investment value concerns resulting from:

4.2.1 Corporate strategies, business performance, and risk management

4.2.2 The Investee Company's implementation of corporate governance principles

4.2.3 The Investee Company's approach to social responsibilities and environmental governance principles

#### Principle 4.3

When the issues of concern or risk factors identified have not yet been publicly disclosed, Institutional Investors should engage the Investee Companies on a confidential basis. The Institutional Investors should, however, prepare a clear action plan for the event that the confidential engagement of the Investee Companies by the Institutional Investors does not result in resolution of the matters identified.

#### Practice 4.4

In the event the confidential engagement of Investee Companies is unsuccessful, Institutional Investors should progressively escalate their actions in relation to the Investee Companies, as deemed necessary, including by:

4.4.1 Formally notifying the Board of Directors of the Institutional Investors' concerns.

4.4.2 Engaging with the Chairman of the Board of Directors or other (independent) directors.

4.4.3 Disclosing information to the public about the matters of concern before the Annual General Meeting or Extraordinary General Meeting of the Investee Companies takes place.

4.4.4 Notifying the Investee Companies of the Institutional Investors' voting decision prior to the Annual General Meeting or Extraordinary General Meeting and subsequently exercising such voting rights at the relevant meetings.

4.4.5 Requesting that the matters of concern identified be added to the agenda for the Annual General Meeting or Extraordinary General Meeting of the Investee Companies, include removing or appointing Directors or Executives.

#### **Principle 4.5**

While escalating the level of engagement with Investee Companies, Institutional Investors may obtain access to non-public information relating to the Investee Companies and their securities which may have a material effect on the price of the Investee Company's securities if disclosed. Institutional Investors should, therefore, implement measures to protect the confidentiality of such non-public price-sensitive information and to prevent the use of such information in violation of applicable laws. The measures should include:

4.5.1 A robust policy and guidelines for the handling of non-public information relating to Investee Companies or their securities in accordance with applicable laws and regulations.

4.5.2 "Wall-crossing" policies and procedures applicable in the event Investee Companies seek to make Institutional investors insiders in relation to non-public information. These policies and procedures should require the Institutional Investor who agrees to become an insider of the Investee Company to provide a specific statement confirming such agreement to the Investee Company.

- If the Institutional Investor does not wish to become an insider of the Investee Company, the Institutional Investor must not request access to non-public price-sensitive information.

- If the Institutional Investor does agree to become an insider of the Investee Company, the Institutional Investor may not engage in illegal insider trading of the securities of the Investee Company in violation of applicable laws and regulations. In addition, the Institutional Investor's policy and guidelines for the handling of confidential information must be followed.

4.5.3 The Institutional Investors should encourage Investee Companies to ensure timely disclosure of material information to the public, including details about matters of concern identified by the Institutional Investors and their resolution if applicable.

4.5.4 Any information obtained by the Institutional Investors in connection with their engagement of the Investee Companies should be kept appropriately in accordance with the Institutional Investors stated policies and procedures and applicable laws and regulations.



Principle 5:

Institutional Investors should have a clear policy on exercising voting rights and disclosure of voting results.

**Principle 5.1**

Institutional Investors should exercise their voting rights in each Investee Company. Voting decisions should be made after careful consideration of all relevant information. Institutional Investors should not adopt a policy to indiscriminately support any and all resolutions proposed by the Board of Directors of an Investee Company as this would suggest that the Institutional Investors do not adequately and fully perform their duties in the best interests of their clients.

**Principle 5.2**

As set out in Principle 4, if the Investee Company does not resolve the issues identified by the Institutional Investor, the Institutional Investor should exercise its voting rights on matters related to the issues at the Annual General Meeting or Extraordinary General Meeting and provide in writing reasons for its vote against any resolution proposed by the Investee Company or its abstention to the Investee Companies.

**Principle 5.3**

Institutional Investors should adopt a voting policy for:

5.3.1 Important matters for which the Institutional Investor must exercise its voting right actively (active voting).

5.3.2 Specific circumstances in which Institutional Investors will abstain from voting.

5.3.3 Amount or percentage of shares for which the Institutional Investor will not exercise its voting rights.

Institutional Investors should adopt procedures for decision-making on identification of “important matters” for active voting (including when to support or vote against a resolution) and the “specific circumstances” in which to abstain from voting as set out in the voting policy, and permissible exceptions to the voting policy.

In case that Institutional Investors do not exercise their voting rights in accordance with the normal voting policy, Institutional Investors should inform their clients with reasons accordingly.

**Principle 5.4**

Institutional Investors should disclose voting activities, such that clients are informed of voting results, and important information about the vote, including any conflicts of interests between Institutional Investors and Investee Companies, any difference of opinion between Institutional Investors and Investee Companies, and any transaction involving the Institutional Investor's parent company or other business group companies.

**Principle 5.5**

Institutional Investors should disclose the use of proxy voting or voting advisory services. The disclosure should include scope of proxy or advisory services used, names of the service providers, and statistics of votes exercised using proxy or advisory services.

**Principle 5.6**

Institutional Investors should disclose their approach to stock lending and recalling lent stocks to be used for voting.

Principle 6:

Institutional Investors should act collectively with other investors and stakeholders if appropriate.

**Principle 6.1**

Collaboration with other investors and stakeholders may be the most effective way to resolve concerns about business or ESG performance identified by the Institutional Investors that have not been resolved through the Institutional Investor's engagement with Investee Companies. Institutional Investors should adopt a policy and procedures with respect to collective engagement with other investors and stakeholders to resolve concerns identified at Investee Companies. The policy should indicate the circumstances in which the Institutional Investors should seek and participate in formal or informal collective engagement.

**Principle 6.2**

While Institutional Investors are encouraged to consider a collaborative approach with other investors and stakeholders such as Relevant Service Providers, regulators, and clients to promote implementation of and strengthen investment governance in the interest of business and ESG performance of Investee Companies, and ultimately the best interest of clients, parties should comply with applicable laws and regulations.

Principle 7:

Institutional Investors should regularly disclose the Investment Governance Policy and their compliance with the Policy
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**Principle 7.1**

Institutional Investors should maintain appropriate record-keeping systems and keep records of how they discharge their investment duties and stewardship responsibilities pursuant to the Policy and in accordance with the Principles set out in this I Code. Institutional Investors should implement mechanisms to ensure that information disclosed to clients and the public is accurate, complete and not misleading.

**Principle 7.2**

Institutional Investors should publicly disclose their Investment Governance Policy, and the level of compliance with the Policy and the Principles set out in the I Code, and any changes thereto, in Thai and/or English through various channels, including the Institutional Investor's website and/or annual report.

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