

Recent Corporate Governance Developments in the Thai Capital Market

Recently, corporate governance in the Thai capital market has significant progress in many areas, as a result of a strong collaboration among capital market organizations and the SEC. For the year 2016-2019, the SEC's priority is to build CG in substance for sustainability through these five areas:

1. Strengthen SEC governance and enforcement
2. Ensure fair treatment to shareholders
3. Improve environment for accessible and fair disclosure
4. Strengthen board responsibilities -Integrating CG, CSR, anti-corruption and SD into business
5. Introduce Stewardship Code for II

Recent Developments and 2016-2019 Priorities

1. Codes & Rules

1.1 Legislative amendments

Progress in legal reform in Thailand during these recent years are as follows:

- **Enactment of the Class Action Act**, which was effective on December 4, 2015, facilitates minority shareholders to launch lawsuit against company/directors.
- **Progress on SEA amendment** – civil-sanctioning powers and provisions on market misconduct have been approved by the Council of State, queuing for Cabinet to proceed to the National Legislative Assembly and are expected to become effective by the end of this year.
- **Amendment of Anti-Corruption Act** - presumed criminal offences of companies engaging in bribery unless proved out with sufficient preventive controls
- **Proposal for legislation and other policies for SOE governance reform**
 - Draft bill to set up a national state-enterprise holding company to consolidate ownership of an initial 12 major companies and improve CG matters of all SOEs
 - Supervision of Special Financial Institutions (SFIs) transferred to Bank of Thailand
 - National SOE Policy Committee revised strategic positioning of key SOEs
 - SEC to strengthen transparency through information disclosure of listed SOE → SOE Policy Office uses as model for all other SOEs

1.2 Financial reporting

The SEC realized that accurate and reliable financial reporting of listed companies are important to the integrity and soundness of the Thai capital market. Therefore, the SEC has driven forward the plan to develop financial reporting ecosystem to promote quality of listed company's financial statement as follows:

- Draft rules on qualification requirements for CFO and Head of Accounting
- Training courses and refreshment to update accounting issues
- Accountability of CFO in signing off financial statements
- Further plans to build capacity of internal audit officers and internal control standard

The SEC reviewed the quality of information disclosure of 188 listed companies' annual reports, which were accounted for 30% of total listed companies (615). The results showed an improvement in information disclosure in most sections.

Issues	Results of 2014 review
1. MD&A	Better information disclosure and explanation, particularly in the section on operating performance and profitability which showed significant improvement from 68.16% to 86.69%.
2. Other important sections	Investment risk, management and supervision showed an in line quality of information disclosure with last year's sampler companies. Also, an improvement in RPT section, a 10% increase from previous year.
3. Business operations	First year to review. Most sampler companies (63-78%) disclosed information and give explanation on this section.
4. CSR and anti-corruption	78.19% of sampler companies disclose information on both topics, an 18% increase from previous year.

1.3 Private placement (PP)

As equity private placement deals of listed companies have considerably increased during recent years whereas doubts in a number of cases were reflected whether the placements were used appropriately or fairly to the shareholders. Therefore, the SEC has revised rules on private placement (PP) of newly issued shares to protect existing shareholders and prevent the exploitation of this means for the benefits of any particular person or persons.

Needs for rules amendments: Abusive PP Schemes

- Issuance of low-priced PP as disguised embezzlement
- Issuance of excessive PP shares (and dilution to shareholders) without clear use of proceed
- Poor disclosure in shareholder meeting documents

Key amendments

- Improve board of directors (BOD) fiduciary duties in proposing agenda & disclosure in shareholder meeting documents, e.g. use of proceeds, project viability, due diligence of subscribers, implications to companies and shareholders, etc.
- Require approval for fixed priced PP to pre-vet shareholder disclosure documents and filing of shareholders documents for other PPs
- SET imposed 1-year silent period for low-priced PP

1.4 Related-party and material transactions

As the current rules on listed companies' transactions have been in use since 2003 while the market landscape and the business operation have generally become more diversified and more complex, the SEC, therefore, proposed rules amendment to

fine-tune the governing rules and prevent unnecessary burdens on listed companies without compromising proper protection for shareholders.

Current rules

- Refer to over 10 years old SET rules needs for updates e.g. on size of transactions, types of material 'transactions', definition of 'related person', etc.
- Limited time to review disclosure of major transactions and independent financial advisor (IFA) reports

Key amendments (Reviewing results of public hearing)

1. Improve technical aspects to be consistent w/ other markets, e.g.
 - Sizes & calculation
 - Definitions of RP, transactions
 - Handling recurring transactions
2. Enhance fiduciary duties of BOD in providing fair & reasonable opinion, e.g.
 - Expand scope of 'interested' directors to include remote relationship and require other BOD to consider whether to abstain
 - Need to record individual director's opinion if conflicting views by IFA, AC, ID
 - Enhance disclosure and pre-vet shareholder document

2. Enforcement

To ensure efficiency, transparency, and fairness in the capital market, supervision and regulatory enforcement must be firm and wrongdoing must be prosecuted promptly.

Recent developments in the area of enforcement include:

2.1 Improve surveillance, monitoring & enforcement

- **Improve internal enforcement case management e.g.**
 - Set up a pre-investigation team to clear minor cases
 - Prioritize cases, clearance of backlog
 - Improve internal flows and coordination with Department of Special Investigation (DSI)
- **Theme inquiries into IPO 'hot' cases which lead to**
 - Review IPO rules on allocation to special patrons
 - SET to review listing and trading rules on min. sizes, min. stock price/par, profitability, tick size, etc.
 - Strengthen roles of IPO financial advisors
- **Strengthen monitoring of listed companies e.g.**
 - Coordinate with SET to rigorously probe into dubious transactions as preventive measures
 - Reviewing SEC-SET MOU on roles and expectations
 - Plans for SEC visits or meetings with targeted low CG companies

2.2 Enforcement statistics on serious offenses

No. of cases prosecuted (fined & filed criminal complaint)

	2016/Q1	2015	2014	2013	2012
Market Manipulation & False dissemination	3	4	9	2	7
Insider Trading	3	7	5	5	1
Fraud / breach of fiduciary duty	0	10	1	3	1

2.3 Insider trading

Recognizing that effective legal enforcement is integral issue to investor confidence, the SEC proposed law amendment in relation to unfair securities trading practices and also promoted roles of institutional investors on this matters. Other recent developments include:

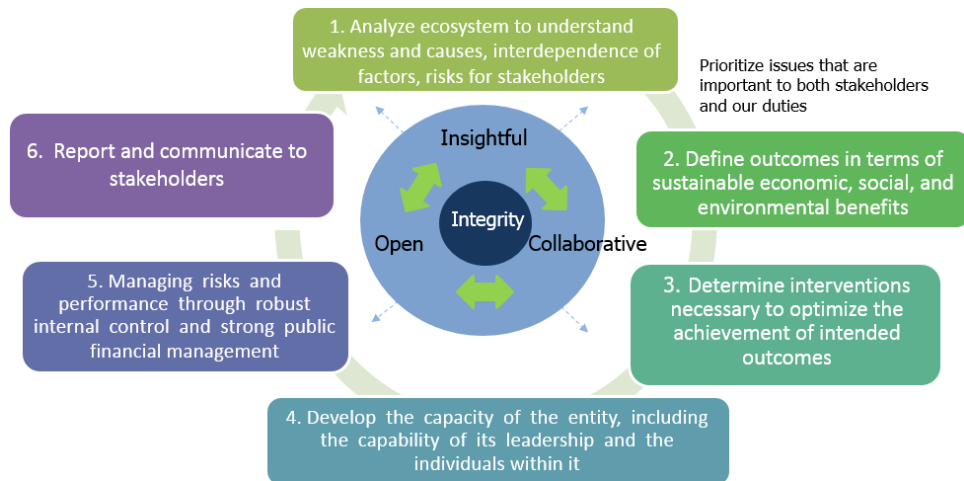
- Draft law amendment on civil sanction and market misconduct
 - Reduce burdensome prove of guilt e.g. ‘use of info’
 - Broaden civil sanction measures - fine, disgorgement of profits, payment for investigation cost, ban from market
- Active roles of institution investors seen on major cases
- Reviewing rules for disqualifying directors and executive officers of listed companies
- Preparing to issue Guidelines for handling market-sensitive information
- CG forum on prevention of insider trading for directors

3. Political and Regulatory Environment

To better respond to stakeholders' need and set the foundations for a sustainable organization, the SEC continually improves internal operations of the SEC itself in many areas which includes:

- Build governance framework into process and culture - integrated approach
- Included in performance evaluation criteria for executives
- Improve public hearing process and content for discussion
- Include HR development
- To be continually improved to be consistent with international standard (The SEC has been applying guidelines of the International Framework: Good Governance in the Public Sector (2014), as conceived by the IFAC (International Federation of Accountants) and CIPFA (The Chartered Institute of Public Finance & Accountancy) to ensure that intended outcome to stakeholders are defined and achieved)
- Preparing for FSAP assessment in 2018
- Used as part of the concept to develop new CG Code for directors of listed companies

The SEC strives to enhance the benefits and wellbeing of people through being a trustworthy and proactive organization, collaborating with all stakeholders to build a sustainable capital market



4. CG Code & Culture

4.1 Current status



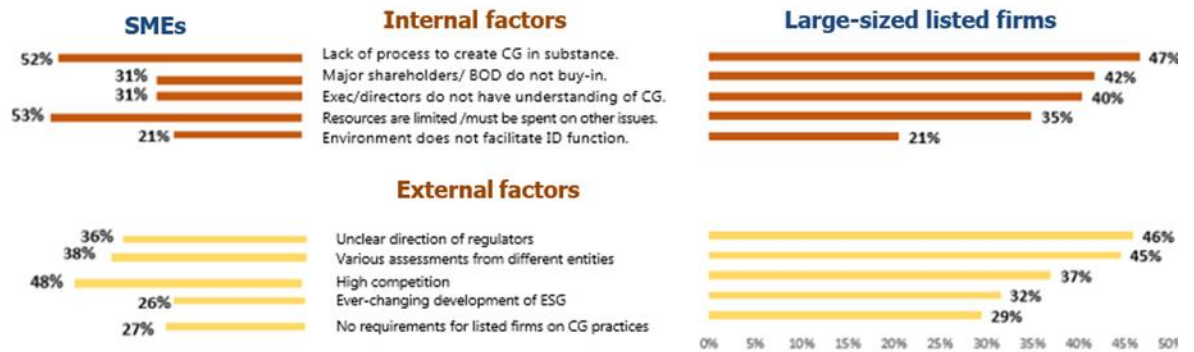
Main comments

- More on form rather than substance
- Increased expectations on CSR/sustainability issues
- Multiple guidelines, assessments and rewards can be burdensome to listed companies
- Listed companies view CG principles as separate from business

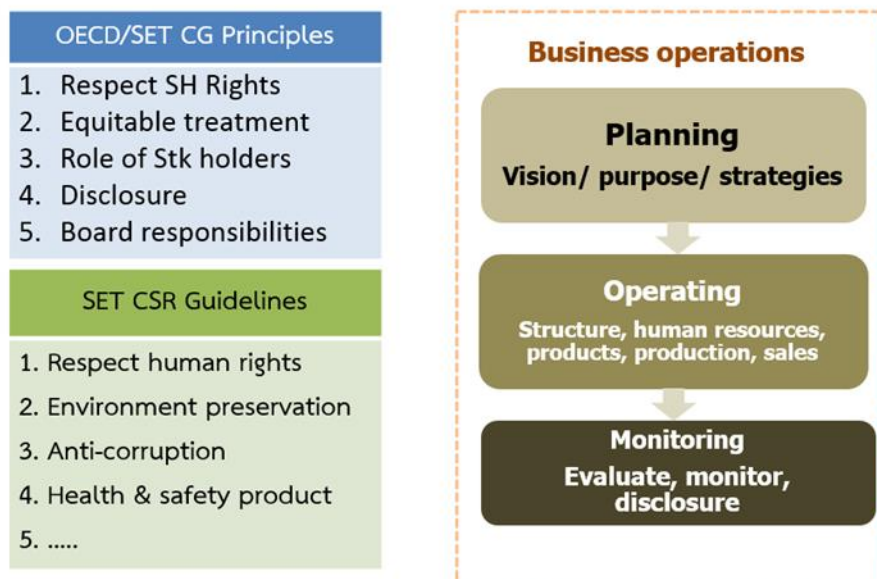
In 2015 therefore, the SEC conducted a survey on 417 directors, shareholders and executives of listed companies on their perception on why CG in substance can't be achieved.

Survey results

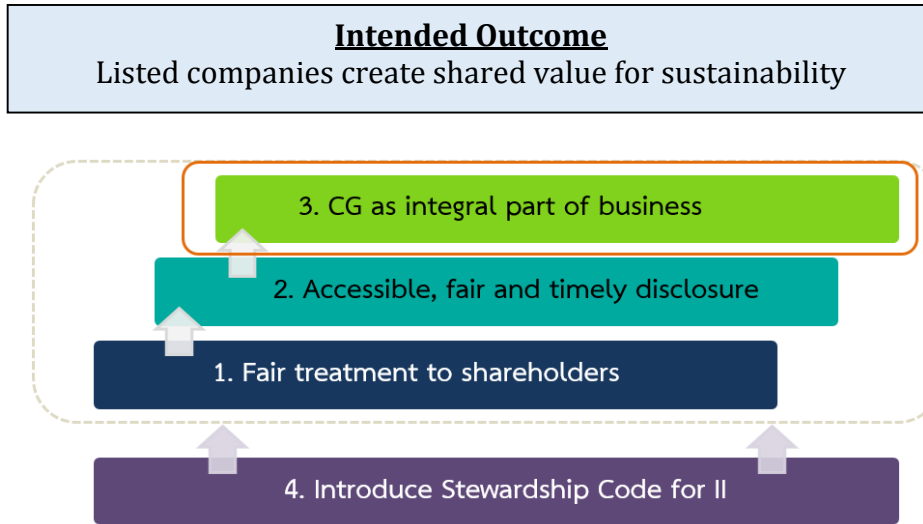
- Large-sized listed firms: Lack of mechanism to apply CG principles into business process
- SMEs: Limited resources / lack of mechanism to apply CG



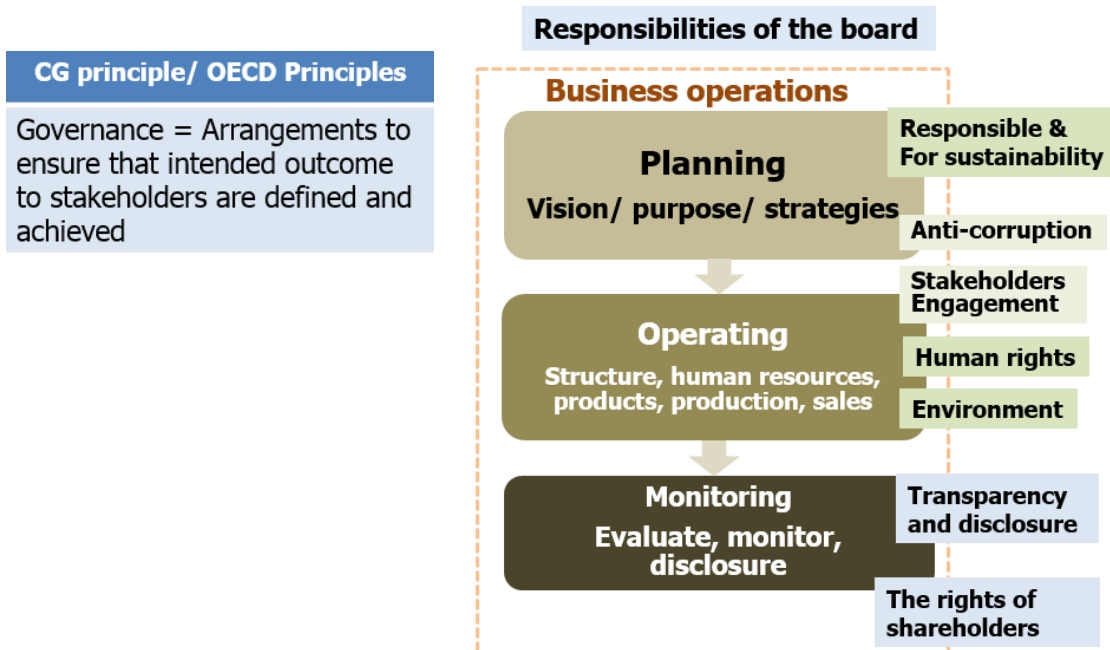
The survey reflects that most companies perceive CG & CSR practices as separated part from their business.



To achieve intended outcome that listed companies create shared value for sustainability, mixtures of mechanism should be implemented which are regulation and enforcement, market force and self-discipline.



In the aspect of self-discipline, board responsibilities will be main focus so that the SEC with the collaboration of key stakeholders is drafting a new Corporate Governance Code for board of directors to apply CG/CSR /SD into their business operation.

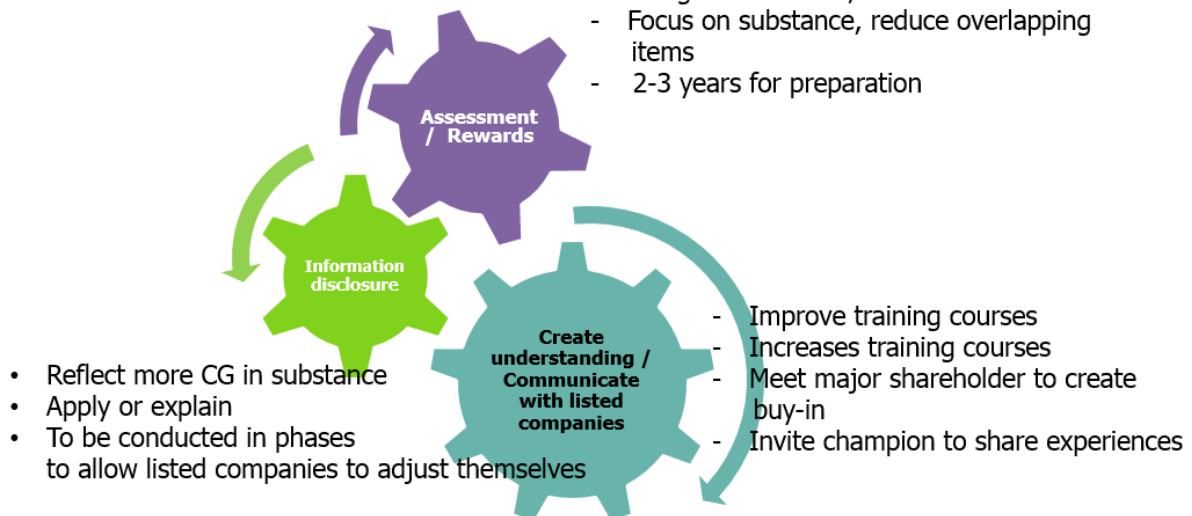


Corporate Governance Code 2016



To ensure that new CG code is well accepted and practical, collaboration among associated agencies is needed and mix of tools should be applied

SEC / SET/ IOD / Thai LCA



Timeframe for Corporate Governance Code 2016

The SEC targets new CG Code to be launched within 2016 but there will be enough time for listed companies to prepare and learn about new CG code by timeframe as follows:

- 2017 Create understanding, launch additional guidelines, and design new assessment form
- 2018 Start applying IG Code, require listed companies to disclose information (Trial)
- 2019 Require listed companies to disclose the information on apply or explain basis, and start the assessment (Trial)
- 2020 Start using new assessment

Institutional investors make investment by taking ESG / CG factors into account

Recently, Thai institutional investors have taken more active roles on the issue relating to corporate governance. For example, Association of Investment Management Companies (AIMC) demonstrated its active role over CG issue relating to Insider trading of Director of listed company.

The SEC realizes that institutional investor plays significant role to improve and enhance sustainability growth in listed companies by taking ESG/CG into their investment decision. Therefore, The SEC in cooperation with AIMC will jointly prepare Thailand: Institutional Investor Code as a guideline for promoting responsible investment of institutional investors. The code is to be launched by the end of 2016

The Code will be used as a framework for laying out policies and guidelines for operating business based on corporate governance principles. This includes management of investment money, performance monitoring of target listed companies, preparation and disclosure of responsible investment policy, strict measures for handling conflicts of interest, and the Environmental, Social and Governance (ESG)-based decision-making factor for choosing target listed companies. The Code will also cover guidelines for monitoring business operation of invested companies closely and actively enough to be able to detect any potential issue at an early stage.

