

**Challenges Related to the Implementation of the IOSCO Objectives  
and Principles:  
SEC Thailand's Experience on the Use of Methodology**

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IOSCO Emerging Markets Committee Meeting  
December 4, 2004, Cairo

1. Thailand had the privilege of being involved in the development process of the Assessment Methodology - - right from the beginning. We were a member of the Implementation Task Force, that was set up to draft this document. The Task Force was very efficient. It was excellently chaired by Ms. Andrea Corcoran. And I think it produced a very valuable piece of work. We therefore had no hesitation in volunteering for the first round pilot self-assessment program. With the amount of time spent on drafting the Methodology, we had high expectations. We wanted therefore to find out how it would pass the field test.

**The Assessment Process**

2. We spent a total of 3 months doing the assessment. We had two assessors from foreign jurisdictions who dedicated a few weeks for pre-visit preparation - - and came for a one week visit on-site.

5. One was Mr. Greg Tanzer, Regional Commissioner of the Australian Securities and Investment Commission. The other assessor was Mr. Charles Grieve, Director of Accounting in the Policy and Corporate Finance Division from the Hong Kong Securities and Futures Commission.

6. The role of external assessors is very important. Actually, before the pilot project, we made our own internal self-appraisal. We congratulated ourselves and awarded ourselves high marks for passing virtually most of the Principles. However, after we went through comprehensive debates with our assessors - - after we had examined the Methodology from all angles - - we ended up with a substantially different view on some of the questions. It is necessary therefore to have open healthy debates and challenges. It is the only way to achieve an objective point of view.

7. Another point that was special about our assessors was that - - both were not only knowledgeable about their profession, but they also learnt and absorbed the local information very quickly. And I think this is quite important.

8. The main objective of a self-assessment program is to find out about one's own weaknesses, one's own shortcomings. And where one finds a weakness, one would want to introduce changes - - either to the legal system, or the regulatory system in order to comply with the IOSCO principles. Therefore, the exercise should not just only identify the gaps, but it should open up a dialogue between the persons doing the assessment and the domestic persons responsible for initiating subsequent changes.

9. Only this way can the subsequent changes be tailored and designed to best comply with the Principles. Compliance can be achieved in more than one ways. The change in laws is definitely effective, but it takes a lot of time.

10. Sometimes, the same objective can be achieved instead by redesigning the work processes and procedures. This takes less time. But it requires a proper understanding of the intention of the Principles, seen in the context of the local environment.

11. If the assessors were cooperative and patient to find out the specificities of the situations, the consultation between the two sides would produce immensely valuable results. It could help to cut short the thinking process for subsequent actions.

12. In this respect, I can say that we were lucky to have two very able assessors. They were prepared to work with us in details. They acted as a good sounding board. They were our assessors as well as our advisors.

13. I therefore wish to put on records today - - my most sincere appreciation for both Greg Tanzer and Charles Grieve.

### **The Finding**

14. In our self-assessment, we think we pass on all Principles except a few. This is not as bad as it first appears. Some of the Principles that we considered ourselves to have failed were because we were too harsh on ourselves. We think we can overcome the hurdles on these within a reasonable period of time.

15. The subsequent actions in Thailand are required on both fronts. We shall need to seek amendment to our laws in order to fully comply with the standards.

16. We shall also address some of those shortcomings through administrative procedures - - either within our own organization or in conjunction with outside organizations.

17. Thailand plans to join FSAP and ROSC in 2006. We have to prepare ourselves in many ways to be ready for these programs. The self-assessment project is therefore extremely useful towards our future work. I have identified one area for improvement. It is regarding our Stock Exchange.

18. The establishment of the Exchange was organized under the government promotion 30 years ago. The Securities Law set up the SEC only 12 years ago.

19. The securities law, at the same time that it established the SEC, also set into legislation the operation of the Stock Exchange. The governance of the Exchange is therefore now stipulated in the law. The Stock Exchange of Thailand is Thailand's only exchange, and is not controlled by members.

20. The SEC ourselves nominates half of the members of the director on the Exchange board. The appointment of Chairman of the Exchange is also a process that involves informal consultation with the Minister of Finance.

21. The Exchange is therefore slanted much more towards government control - - than member control. Even the income of our Exchange is not available for distribution to its members. Residual income after expenses of the Exchange every year is salted away. It is only available for strengthening its financial position and the clearing system, and for future development of the capital market.

22. Despite this close control by the authority, rules of the Exchange are still subjected to approval by the SEC. All rules **except** those related to trading and settlement.

23. People who drafted our law left these out because they were deemed to be of technical nature and better left to the Exchange to discuss solely with its members.

24. However, under Principle 7 - - Key Question 1 d) it is required that the exchange must submit to regulators all of their rules for review and approval.

25. Unfortunately, because our law left out the **rules on trading and settlement** from SEC's approval, we struggled about how to classify ourselves regarding IOSCO Principle 7.

26. During the self-assessment exercise, we went for - -Not Implemented - - for Principle 7. But today, after lengthy discussions within our office, I think we might have concluded wrongly.

27. I would argue that - - due to the very close control by the Thai authority on the Stock Exchange, and the regular examination now routinely carried out by the SEC, Thailand should be classified as - - Broadly Implemented - - for Principle 7.

### **Point for improvement**

28. Finally, my suggestion for improvement to the Methodology! There are only two. This reflects how well the document had been prepared and thought out.

29. In Principle 26 on oversight of the Exchange, one of the key issues is that the SEC must have the ability to withdraw or revoke the Exchange license. This appears in Key question 3 b).

30. In Thailand we lack such power. It led us to classify ourselves as – Not Implemented.

31. However, I believe that the Methodology has not sufficiently taken into account the differences between jurisdictions. In many jurisdictions, including Thailand, the requirement for power to revoke license of stock exchanges - - may **not** be practical.

32. The Stock Exchange of Thailand is our only Exchange and, as I mentioned before, we retain full authority to regulate them through their Board of Directors, half of which is appointed by us. So, there is no need for us to seek such a power. I do not have any ground to justify to our parliament that the law should be amended to further provide the SEC with this power - - when in practice the authority already have very close control over the Exchange.

33. I argue that the Methodology has to be changed here to allow for such local conditions to be taken into account. Failure to do so will only make the Methodology less relevant.

34. The second point is that there is perhaps a need to review or reflect for each capital market under review the system of detection and prosecution of corporate frauds. I don't think currently this is adequately pointed out in the Methodology.

35. In most jurisdictions, the responsibility for detecting and prosecuting frauds in public companies is not directly that of the securities regulators.

36. However, in the case of Thailand, even though the direct responsibility is that of the department of company registration, they are limited in both resources and expertise.

37. In Thailand, therefore, the SEC has been active in this area and we have been successful both in prosecuting and now also preventing such crimes. Nowadays, we have a unit to regularly monitor the financial accounts and corporate news releases to identify doubtful transactions.

38. When we found one, we immediately asked the companies involved to clarify and justify the relevant transactions. Lately, in all of the cases that we pin pointed, once the companies learnt about our doubts, they reversed or amended the transactions to our satisfaction without delay.

40. It is very important therefore that the country under IOSCO Principle assessment have a system for corporate fraud detection, prosecution and prevention that works in practice - - whether embedded within the SEC or outside.

41. The Methodology should spell out the need to appraise this process to ensure that it is effective. I believe that this should be a pre-condition mentioned in the Methodology.

42. Despite these comments, it does not detract from the fact that Thailand found the Methodology to be a practical approach. My congratulations therefore to Ms. Andrea Corcoran, and other members of the Task Force for their excellent work!

43. I have another point to make before I conclude. IOSCO has done a great job so far with its two pieces of work – the Principles and Methodology. They are well accepted and adopted by IMF and World Bank as assessment tools for FSAP and ROSC. IOSCO is now embarking on another important phase – the assessment and the enforcement of its Principles. I strongly wish to propose to both the IMF and the World Bank to make use of the outcome from the assessment program as part of their work on FSAP and ROSC.

44. IOSCO's assessment program is performed by practitioners. We found our results to be rigorous and objective. We see absolutely no point in having to go over the exercise once again under FSAP and ROSC.

45. In closing, ladies and gentlemen, let me say that we went into the self-assessment with an open heart - - an open mind. And we found the result to be worthwhile. I very much hope that our positive experiences will encourage all emerging markets to consider entering the self-assessment program without delay.