

## Changes in legal environment in securities business

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Good Morning, Ladies and gentlemen

1. It is a pleasure to be able to share some thoughts with you in this 4<sup>th</sup> Annual In-House Congress in Bangkok. I was told that a large majority of the people that attend today's conference are lawyers.

2. I have never been surrounded by so many lawyers. The largest contingency that I have ever had was the group of lawyers that worked with me - - when I was still at the Bank of Thailand. We were then sued for damages by some of the owners of the finance companies that we closed down during the 1997 Asian crisis. Some of these lawsuits are still going through the courts today.

3. Even though I am confident that the Thai authority did the right thing, but the fact that one can be sued in the line of duty does make one's job somewhat more risky than usual.

4. I became even more alarmed when I found out that if the authority should ever lose in any of these cases, the officials that were involved in the execution of the policy - - could suddenly find themselves also **personally liable** to make up the financial losses that occur to the state.

5. I was in the eye of the storm during the crisis, at the center of policy formulation. And even though I knew that I did the right things, all these lawsuits certainly made the risks more personal than theoretical.

6. In this type of situation, you want to make sure that you have a good lawyer. Good lawyers can give you confidence. However, I am not sure though whether having as many as a roomful of lawyers like today should give me more - or less - - comfort.

7. Ladies and gentlemen, today I wish to relay to you, in term of legal implications, what changes have gone on in the Securities and Exchange Commission of Thailand since I took office at the end of 2003. After that I shall go on to our future plan for the capital market regarding our laws.

### Changes in 2004

8. Since I took office, I set as my most important agenda the task of improving corporate governance. In Thailand, we had a good overall official framework for governance, the form. However, the actual result, the substance, did not yet **fully** match the form.

9. We set up a national level committee on corporate governance headed by our Prime Minister in 2002. Under this high level committee, a total of 6 sub-committees were also established to cover all of the important aspects of commercial and financial dealings.

10. Positive reinforcement was also given by way of prizes to companies ranked with high marks on governance. Companies were recognized for excelling in disclosure. Governance ratings were conducted to generate awareness and promote the needs for improvement.

11. Unfortunately, we still found cases of fraud. Invariably, public companies lent money to their major shareholders, or executives, or people related to them. Many of these loans later became non-performing. Or they used funds from public companies to invest in projects of the major shareholders, which later turned sour and require substantial write-downs in value. Or the public companies that held shares in subsidiaries. At times, these subsidiaries increased their capital. The public companies inexplicably decided **not** to subscribe to the capital increase in the subsidiaries. The public companies conveniently gave up their rights.

12. And invariably the people who stepped in to exercise those rights to buy shares in the subsidiaries instead - - were people connected to the major shareholders or people connected to the top executives one way or another.

13. In effect, the board of directors of these public companies allowed money or benefits to be siphoned out to the major shareholders, or the top executives. They were robberies involving big sums, carried out in full daylight.

14. Luckily it only occurred in just a very small number of companies, the hard-core. Nevertheless, it brought bad reputation to our capital market as a whole. Therefore, the SEC had to put a stop to these actions.

15. What we did was first to get the Stock Exchange to amend its rules. Clearer definition of transactions that are “connected” to the major shareholders or the top executives was made. These transactions have to be approved in the meeting of shareholders.

16. Companies will now have to submit copies of information to their shareholders also to the SEC. If we see that the information is too one-sided - - if it does not point out clearly to the shareholders the detrimental effects - - or if it is simply too technical or too complicated for laymen to understand, the SEC shall encourage more analysis in the public media.

17. We aim to put the board of directors under the spotlight. We shall also encourage fund managers to closely monitor the activities of the companies in which they hold shares and exercise close vigilance in their votes.

18. In addition to changing the rules, we also set up inside the SEC an account-monitoring unit. They now regularly police financial statements by comparing quarterly reports. We concentrate on the companies that we shortlist as potentially weak in governance.

19. So far, we have been successful in picking out a few transactions that were supposed to be decided by the shareholders, but actually were not. We immediately ordered the companies involved to explain. In all of the cases that we caught last year, the companies involved relented. The transactions were either revoked or amended to our satisfaction.

20. For transactions that are close to the borderline, not bad enough to prosecute but questionable enough to raise our eyebrows, we have set up a **disciplinary committee** consisting of people from both the public and the private sector. The committee can invite the directors involved to come in for interviews. They will be asked to explain their rationale in approving such questionable deals. If unsatisfied, the disciplinary committee can issue yellow cards. Or if severe, it can issue a red card. The directors involved will then no longer become eligible to become a director in any public company.

### **Future legal amendments**

21. Let me now go forward to the future, and tell you what we plan to do in term of changes to our laws. We are proposing four changes to our legislation.

22. The **first** is our own Securities and Exchange Act. We have proposed amendments that have already been accepted by the government and are currently in the drafting process.

23. On the issue of Governance. The amendment will spell out clearly the fiduciary duty of directors, their legal responsibility, and their penalties for failure to carry out their duty. It will also add rights of small shareholders to ask public companies to convene meetings. And it will set the penalties both civil and criminal for failure to inform the shareholders of important information.

24. On the issue of conduct of the Stock Exchange. The amendment will set more clearly the division of responsibility between the Stock Exchange and the SEC. The SEC will be empowered to guide the behavior of the Exchange more closely.

25. On the issue of the settlement system. The amendment will protect retail customers that have accounts with the brokers when they are put into receivership. Measures will be set to allow the customers to carry out transactions with less risk imposed by financial condition of their brokers.

26. Assets of customers will, for the first time, be legally segregated in the event of receivership in both the securities companies and the clearing center.

27. On the issue scripless transfers. The amendment will allow for scripless transfers to be done by all clearing centers, not just the one operated by the Stock Exchange. It will also allow the pledging of scripless securities to be done with a clearer finality

28. Lastly, on the issue of law enforcement. The amendment will enhance the power of the SEC in this regard. The SEC shall, for the first time, be able to take civil action against unfair trading practices.

29. All this was proposed by my predecessor. I take my hat off to him for his excellent work. However, what the SEC did not yet propose, and I have found out by now that it is also necessary for the good functioning of our market, is to extend our power to prosecute for fraud into the subsidiaries.

30. The SEC has power to investigate wrong doings committed by public companies. But the power does not extend to subsidiaries, and I think this is a gap that should be closed in the next round of legal amendments.

31. The **second** proposal is to enact a law on trust for financial transactions. At the moment, the establishment of trusts is not allowed in Thailand. However, its use is very much needed in financial transactions.

32. The proposed Act will spell out when a trust is allowed to be set up as well as the system for supervision of trust activities. This new law will pave the way for the development of our capital market, particularly the activities related to derivatives.

33. The **third** proposal is the enactment of the law to allow for class action suits. Class-action suit is available in many countries. It allows small shareholders to minimize expenses and costs by pulling together their resources.

34. It is the best way to empower retail investors particularly in these days and age when legal fees are often going through the roof. The efforts and the expenses that an individual shareholder has to bear can be prohibitive. We need this law to make sure that justice can be served to all.

35. Finally, the **last** proposal that we shall make to the government in due course is to amend the law to allow for comprehensive international cooperation.

36. With increased efforts against terrorism and cross border crimes, all countries will need to amend their laws to ensure that information can be freely exchanged to ensure proper enforcement of the laws worldwide.

37. In the past, this type of cooperation might be deemed to be that of emerging markets providing information to help developed countries in their enforcement. But last year, someone came out with an accusation that Thai politicians manipulated share prices.

38. The only way we were able to make a firm conclusion to the contrary was by obtaining information from abroad. This amendment will therefore benefit emerging markets like Thailand as well.

39. Ladies and gentlemen, I think we have been quite ambitious in our proposals. But they are necessary. Capital markets operate based on trust. And trust cannot be done blindly.

40. Confidence in the market will arise only if all parties know that the treatment that they receive is fair - - that the laws are comprehensive - - and that the policing and the enforcement of the law is effective.

41. That is why we have to introduce these changes to our laws. And since you are the top lawyers of Thailand and in the region, that is why I need to make sure that you all understand our needs, and that you all give us your unwavering support.

Thank you.