

Toward Better Corporate Governance

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1. Corporate governance promotion has been widely recognized as the key fundamental towards having transparency and sound capital markets and it is the factor that keeps almost, if not all, emerging markets working extra hours trying to achieve the goal. However, one country's effort alone may not bring the finishing result soon enough. The Thai SEC is a true believer that if all of us in emerging markets can make contribution in terms of sharing information on measures and mechanisms that brought successful or positive consequences in their own markets, then we can learn so much quicker from one another. Keep in mind the general rule that what is actually effective in one place may be ineffective in others. But at this initial stage, we should not let such hesitation preventing us from gaining knowledge.

2. In this regard, the Thai SEC would like to take this opportunity to make a first contribution in sharing our strategy and progress we have made recently which we believe has taken us a step closer. Before getting into the details, I would like to provide you some background information concerning Thai business environment and its symptoms. They are as follows:

Backgrounds and Symptoms

3. A lot of business entities in Thailand are family-owned businesses. Thus presented lots of cross shareholding structures as well as numbers of improper related transactions.

4. Directors who represent major shareholder families, and in some cases independent directors, have inadequate level of knowledge in terms of their responsibilities and fiduciary duties.

5. Creative accounting can be found in some listed companies' financial reports.

6. Auditor's reports sometimes offer unclear or ambiguous messages and thus prevent shareholders and the public, especially those who are incapable of analyzing financial reports, from understanding the true current financial status.

7. Retail investors are lack of incentives to sue the wrongdoing company, as the legal proceedings are costly and time consuming. Moreover, the case must be proved beyond reasonable doubt in order to make the conviction on the wrongdoers. In addition, investors are discouraged by the fact that the redress, if any, shall be paid to the benefits of the company, not to suffered investors.

8. There are insufficient administrative sanction mechanisms in place to draw public confidence.

“Prevention – Intervention – Sanction” 3 Steps Scheme

9. Since 2004, the SEC’s approach toward better corporate governance has been to provide the market full fledged mechanisms that can simultaneously *prevent* misappropriate conducts, *intervene* wrongful attempts, and *sanction* wrongdoers. Such approach is reflected in the SEC’s efforts both in the drafting of CG related regulations and in the coordination with relevant parties, and to date they are all creating very positive result for the SEC. Details of those measures can be illustrated here:

I. Prevention

- The establishment of the training programs for directors of listed companies namely Directors Certification Program (DCP) and Directors Accreditation Program (DAP). The specialized programs offer participants the much-needed knowledge concerning duties of directors. So far, the programs which conducted by the Thai Institute of Directors Association (IOD) and subsidized by the Stock Exchange of Thailand have been provided to more than 50% of all listed companies directors across the market and quickly gain acceptance among listed companies’ directors;

Education:

- The “Director’s Handbook” published and distributed in 2005 is expected to serve as a working manual describing the roles, responsibilities and fiduciary duties of listed company’s directors under Thai law and corporate governance practices. Directors will be beneficial by learning how to deal with real life events taking place inside board meeting rooms. The SEC firmly believes that the handbook will provide all directors clearer messages that reflect the objectives of all relevant regulations in an easy-to-understand context.

Accounting matters:

- The new law concerning accounting practices or the so-called “Account Profession Act B.E. 2547” became effective in Q4 of 2004. The law reflects the giant leap forward in the efforts to enhance the quality of financial reports distributed among Thai capital market. The law introduces a new regulatory framework under which all accounting professionals, i.e. auditing, accounting, managerial accounting, tax-planning, and other accounting services, are supervised.

The newly established Federation of Accounting Profession and the Accounting Profession Oversight Board are the offspring of the new legislation. The Federation is designed to act as a governing body with responsibilities such as licensing, registration, and drafting of conduct principles, while the Oversight board is the one who supervises the Federation’s business and endorses Thai accounting standards.

- The series of the SEC’s accounting guidelines have been regularly issued with the coordination with the accounting professional body. The SEC’s attempt in this regard is to provide clarifications of various Thai accounting standards and to also lessen the events of creative accountings. So far, there are 7 of them issued with the topics relating to various accounting standards such as investment in subsidiaries, properties foreclosed, and loan guarantee.

- Auditors of listed company are closely monitored by the SEC and by the Federation of Accounting Professions to ensure transparency and independency. The SEC has

been examining auditors' working papers in some suspicion cases to ensure that Thai auditing standards are complied.

- Quarterly financial statements of listed companies are also being closely watched. In case the SEC finds some irregularity the SEC will make a public statement and require the company to resolve the issue in timely manner. With coordination with the Stock Exchange of Thailand, the "SP" (suspend trading) or "NP" (notice pending) signs will be posted on the company with adverse opinion from auditor to alarm the public of the pending issue.

- An internal steering committee (so-called Steering I) is set up by the SEC with representatives from public sector and reputable market practitioners to focus on in-depth analysis of listed companies' financial related reports. So far, the committee has required 9 listed companies to reissue their financial statements.

II. Intervention

- "Connected transaction" rule has been updated to be more realistic to the commercial practice and less stringent. The new rule will provide the SEC the power to intervene in the case of improper behavior reflecting in inappropriate connected transactions. In achieving the goal, the SEC will thoroughly review all connected transactions which passed the board resolution to ensure that the transaction carried out for the best interest of the company and its shareholders.

- For the purpose of screening inappropriate connected transactions, the shareholders meeting documents are required to be submitted to the SEC prior to the meeting date. The SEC has the power to require explanations from the company or its executives, or issue order for rectifications. Should the company insist in its doubtful attempt, the SEC will issue a public statement to alarm the shareholders of the matter. As a result, in 2004 the SEC was able to stop the total of 6 inappropriate transactions worth 3,000 million baht and also issued the orders for rectification of 3 transactions worth 1,500 million baht.

III. Sanction

- Director Responsibilities Steering Committee (so-called Steering II) is established to monitor directors' activities. If there is an evidence of improper or illegal conducts, the committee may issue directors "yellow cards" or in some sever cases, "red cards" which will automatically put their names in the blacklist.

- The director registration scheme which will be in effect on March 1, 2005 will serve as a tool that enable the SEC to impose administrative sanctions on wrongdoing directors or those who fail to perform their fiduciary duties. At the beginning all directors (approx. 7,000 people) will be included in the so-called "white list" unless, later on, given "red cards", by Steering II. Having received a red card, the director will be ineligible to maintain his directorship position in any listed company.

- In carrying the assignment of Steering II, the SEC adopts cautious proceedings to ensure transparency in giving yellow or red cards. Those who are questioned by the committee will be given chances to fully present their cases. Prior to the conclusion, advice from external panel will be gathered to eliminate "one-side" opinions on any questionable director.

10. In conclusion, on behalf of the Thai SEC, I do hope that the comprehensive information given here could offer you an inside look on what kept the Thai SEC busy recently and I am

more than welcome for any comment or suggestion that can complete or enhance our regulatory framework. Again I am certain that we can spend much shorter time achieving our goals on the development of CG if we start sharing and working together. Thank you.