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ROSC

Report on the Observance of Standards and Codes (ROSC)

CORPORATE GOVERNANCE
COUNTRY ASSESSMENT

Thailand

JANUARY 2013

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The assessment reflects technical discussions with the Securities and Exchange Commission, Bank of Thailand, Stock Exchange of Thailand, Department of Business Development in the Ministry of Commerce, Thai Institute of Directors, State Enterprise Policy Office in the Ministry of Finance, Federation of Accounting Professions, Social Security Office, Government Pension Fund, and representatives of companies, banks, and market participants.

Behdad Nowroozi, James Seward, and Alex Berg provided advice and comments.

Findings of this ROSC are based on the Detailed Country Assessment (DCA), which is presented as a separate annex.

About the ROSC

What is corporate governance?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, board of directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The OECD Principles of Corporate Governance provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the board.

Why is corporate governance important?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research. Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

The Corporate Governance ROSC

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment benchmarks a country's legal and regulatory framework, practices and compliance of listed firms, and enforcement capacity vis-à-vis the OECD Principles.

- ▶ The assessments are standardized and systematic, and include policy recommendations and a model country action plan. In response, many countries have initiated legal, regulatory, and institutional corporate governance reforms.
- ▶ The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the World Bank can also carry-out special policy reviews that focus on specific sectors, in particular for banks and state-owned enterprises.
- ▶ Assessments can be updated to measure progress over time.
- ▶ Country participation in the assessment process, and the publication of the final report, are voluntary.

By the end of January 2013, 80 reports have been completed in 59 countries.



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The 2012 Corporate Governance ROSC for Thailand

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ACRONYMS

ASEAN: Association of Southeast Asian Nations
BoT: Bank of Thailand
CEO: Chief Executive Officer. This is used as a synonym for managing director.
CG: Corporate Governance
CGR: Corporate Governance Report of Thai Listed Companies prepared by the Thai Institute of Directors
CSR: Corporate Social Responsibility
DBD: Department of Business Development
DCA: Detailed Country Assessment, an annex to this ROSC.
DSI: Department of Special Investigations
FAP: Federation of Accounting Professions
FPO: Fiscal Policy Office
GDP: Gross Domestic Product
GMS: general meeting of shareholders
GPF: Government Pension Fund
IFAC: International Federation of Accountants
IFRS: International Financial Reporting Standards
IOSCO: International Organization of Securities Commissions
ISA: International Standards on Auditing
ISQC: International Standard on Quality Control
KPI: key performance indicators
MAI: Market for Alternative Investment
MD: Managing Director; in practice, CEO is generally used.
MoF: Ministry of Finance
NVDR: Non-voting depository receipts
OAG: Office of Auditor General
OECD: Organization for Economic Co-operation and Development
PLCA: Public Limited Companies Act 1992
Principles: Principles of Good Corporate Governance for Listed Companies 2006
PTT: Thai PTT Public Company Limited.
ROSC: (Corporate Governance) Report on the Observance of Standards and Codes
RPT: Related Party Transaction.
SEA: Securities and Exchange Act 1992
SEC: Securities and Exchange Commission of Thailand
SEPO: State Enterprise Policy Office
SET: Stock Exchange of Thailand.
SFIS: Specialized financial institutions
SOE: State Owned Enterprise
TFRS: Thai Financial Reporting Standards
Thai IoD: Thai Institute of Directors
THB: Thai Baht
TRIS: Thailand Rating Information Service
TSD: Thailand Securities Depository
USD: US Dollar

DEFINITIONS

Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.

Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.

Shareholder agreement: An agreement between shareholders on the administration of the company. Shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.

Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

Corporate Governance Country Assessment

Thailand

*January 2013***EXECUTIVE SUMMARY**

This report assesses Thailand's corporate governance policy framework. It highlights recent improvements in corporate governance (CG) regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Thailand. It is an update of the 2005 Corporate Governance Report on the Observance of Standards and Codes (CG ROSC).

Good corporate governance enhances investor trust, protects minority shareholders, and encourages better decision making and improved relations with workers, creditors, and other stakeholders. Better investor protection can lower the cost of capital and encourage companies to list and raise funds through equity markets. It is crucial to protect retirement savings invested in listed companies. Good corporate governance also helps to ensure that these companies operate more transparently and efficiently.

Achievements: Corporate governance reform has been a priority since the 1997 financial crisis and has continued since the last CG ROSC in 2005, with significant revisions to the Securities and Exchange Act 1992 (SEA), new Principles of Good Corporate Governance for listed companies, and a new banking act and supporting regulation to improve bank corporate governance. The amendments to the SEA included clearer duties for directors, stronger protection for shareholder rights, whistle blower protection, and provisions to increase the independence and professionalism of the Securities and Exchange Commission (SEC). The SEC has also increased direct oversight of auditors of listed companies, and local accounting standards are converging to International Financial Reporting Standards.

The SEC and Bank of Thailand (BoT) are well resourced and active in enforcing the various rules and requirements under their jurisdiction. The State Enterprise Policy Office (SEPO) has continued its efforts to improve the governance of state owned enterprises (SOEs), which include some of the largest listed companies. Thailand is also notable for a number of initiatives to improve corporate governance that go beyond legal or regulatory requirements. These include various programs of the Stock Exchange of Thailand and the Thai Associations of Listed Companies and Investors, and the work of the Thai Institute of Directors (Thai IoD). Thai IoD has been a pioneer in providing training to directors and through its Corporate Governance Report, introduced one of the first and most successful corporate governance scorecards in an emerging market economy.

Basic shareholder rights are well established, and shareholders freely trade their shares, participate in shareholders meetings—including by proxy—and receive a range of information from listed companies. They approve board members, dividends, major and related party transactions (RPTs),



capital increases, and changes to the company's articles, and have preemptive rights for new issues of shares. RPT rules require interested shareholders to recuse themselves from voting. Shareholders are to approve potential anti-takeover devices and receive tender offers from shareholders that acquire 25, 50, or 75 percent of shares.

Insider trading is prohibited and other types of self-dealing and conflicts of interest are regulated. The SEC actively monitors the market for abusive practices. Institutional investors regularly vote their shares and some have issued voting policies and disclose their voting, as required by SEC regulations for asset managers. They occasionally vote against management.

Companies produce complete audited annual reports largely consistent with international standards. These include disclosure of: industry and company trends and prospects; details on directors; risk and risk management; shareholdings of major shareholders and directors; details on RPTs; and statements on corporate governance and corporate social responsibility (CSR).

Information is available through company websites, and through the Department of Business Development, the company registrar in the Ministry of Commerce, both online and offline. Companies also pass on a range of material information to the SEC and SET, which is then posted on their websites.

Most directors are non-executive, and typically at least one third are considered independent of management and major shareholders. Most boards also have separate chairs and CEOs. Duties of loyalty and care are found in the law and responsibilities are spelled out in the Principles and listing rules. These include oversight of management and strategy, approval of budgets and major expenditures, and ensuring that risk management and internal controls are established. In practice, directors take their responsibilities seriously. Directors participate in director training, and many undertake annual self-evaluations of their performance.

The SEC screens directors of listed companies, and can disqualify them under the SEA. Directors and major shareholders in financial institutions must also pass a fit and proper test, and can be rejected and removed by the BoT. Guidelines for banks and other financial institutions have additional norms, including a risk committee for the board.

Listed companies have audit committees of independent members, and many also have nomination and remuneration committees, as encouraged by the Principles. Companies also have internal audit functions that report to the audit committee and generally have internal control and risk management systems. Whistleblowers are legally protected.

Key Obstacles: While the underlying legislation is generally clear, it has been supplemented by a range of regulations and guidelines, many of which are still considered relevant or in force from several years before, even when more recent statements may cover the same ground. There is also potentially confusing differences and overlap between the SEA and PLCA. In spite of wide spread training and awareness raising, market participants may not always fully understand relevant parts of the corporate governance framework.

While active enforcers, the response of the SEC and BoT to the global financial crisis has been limited, and they do not conduct joint inspections in spite of the growing importance of diversified financial companies to the Thai economy. The chair of the SEC recently resigned in scandal and neither the BoT nor the SEC are fully independent of the government and Ministry of Finance (MoF). The Ministry also exerts influence through SEPO. SOEs also still face a range of governance challenges including large numbers of civil servants on their boards. Line ministries combine *de facto* shareholder powers in SOEs with policy and sometimes regulatory functions for both SOEs as well as the private sector and lack guidance more generally on board appointment and other key shareholder functions.

Shareholders may receive as little as seven days notice for the GMS (general meeting of shareholders) and postal and electronic voting are not allowed. Foreign shareholders face limits on their participation in certain companies, and custodians do not have explicit requirements to act on their behalf. Minority shareholders have limited influence on actual board selection and high barriers to call a GMS, influence the meeting agenda, or bring legal action against the company or a director under the law.

Accounting standards still have some significant differences from international standards, particularly with respect to financial instruments. Owners and companies disclose direct shareholdings, but often do not disclose indirect control, or control held through custodians or shareholder agreements, in spite of SEC rules that imply they should.

Independence requirements for auditors still allow for the provision of a range of non-audit services to clients, and, until recently, there was little oversight of audit quality or independence. Other reputational agents also have limited requirements in terms of disclosing or managing conflicts of interest. SOEs are audited by the Office of Auditor General (OAG), a state auditor with limited capabilities to audit statements prepared in accordance with current accounting standards.

While board chair and CEO are generally not the same, the chairman is often not independent and may act as a “full-time” chair. Some market participants also question the effective independence of some long-tenured board members and SOE directors. In practice, the controlling shareholder still has great influence board selection. The controlling shareholder may also pick the CEO, which is not an explicit board power, and in turn some board members may see the interest of the company and the controlling shareholder as being largely the same thing.

Findings of the Detailed Country Assessment: The Detailed Country Assessment of the OECD Principles of Corporate Governance is summarized in the tables at the end of the report. The assessment is based on a methodology developed with the OECD and looks at both legal requirements and actual practice. The assessment confirms that Thailand is a regional leader in corporate governance and has achieved high levels of compliance in a number of key areas, with a relatively comprehensive framework and high levels of compliance. However, it also finds some gaps: 2 principle are implemented at 50 (out of a 100 percent) or less, and 14 at 75 or less. Overall, of the assessed Principles, 6 are rated fully implemented (95+), 42 broadly (75+), 16 partially (35-75), and none are not implemented.

Next Steps: Thailand has undertaken important reforms in recent years. It should build on this progress and take further steps to protect smaller shareholders and retirement savings and maintaining investor confidence. Key reforms include:

- ▶ Improving SOE governance and making the state a more effective owner, to support this a focused review on SOE governance, benchmarking the existing framework against the *OECD Guidelines of Corporate Governance for State Owned Enterprises* and other international good practice;
- ▶ Maintaining the credibility and effectiveness of the SEC and BoT, including through stronger independence from the government and improved enforcement capacity and cooperation;
- ▶ Updating and clarifying SET and SEC guidelines and regulations to remove redundancy and make them easier to understand for market participants, and in the longer term bring the PLCA closer to the SEA in relevant areas;
- ▶ Improving shareholder rights and redress, including for foreign shareholders and through the SEC;
- ▶ Finalizing convergence to IFRS and enhancing beneficial ownership disclosure and other non-financial disclosure, including by incorporating existing shareholder disclosure into the annual report, and continuing to move to full adoption of international accounting standards;
- ▶ Strengthening auditor independence and effectiveness of market intermediaries; and
- ▶ Continuing to increase board independence and effectiveness, including by moving to independent chairs and increasing oversight of management.

Landscape

The Corporate Governance ROSC assessment of Thailand benchmarks law and practice against the OECD Principles of Corporate Governance. The ROSC focuses on the companies listed on the Stock Exchange of Thailand. This report updates a previous report published in June 2005.

Corporate governance reform has been a priority since the 1997 financial crisis and has continued since the last CG ROSC in 2005, with significant revisions to the Securities and Exchange Act 1992 (SEA), new Principles of Good Corporate Governance for listed companies, and a new banking act and supporting regulation to improve bank corporate governance. The Securities and Exchange Commission (SEC) has also increased direct oversight of auditors of listed companies, and local accounting standards are converging to International Financial Reporting Standards. Overall, the corporate governance framework is relatively comprehensive, ensuring that shareholder rights and good practice in terms of boards and company disclosure are in place.

The SEC and Bank of Thailand (BoT) are active in enforcing relevant various rules and requirements and the State Enterprise Policy Office (SEPO) has continued its efforts to improve the governance of SOEs. The Thai Institute of Directors (Thai IoD) has been a pioneer in director training and through its Corporate Governance Report (CGR) which rates governance of listed companies. The CGR confirms that companies and boards have taken a number of steps to improve governance and now comply with many areas of international good practice.

However, challenges remain. The SEC and SET have issued a number of overlapping mandatory and voluntary notifications and guidelines over the years, and market participants are not always aware of current requirements or best practice. The SEC is not fully independent of the government, and cannot bring civil actions or collect damages for investors. SOEs still lag the private sector in corporate governance, and how the state should act as an owner is not always clear. Minority shareholders, especially foreign shareholders, still face certain limits on their ability to participate in the governance of the company, including limited influence on board choice and some other key decisions, and do not always receive key information on companies, including full disclosure of who controls them. Auditors can and do provide non-audit services to clients and only recently came under independent oversight. Boards do not have clear power to choose or remove the CEO, and may still put the interest of the controlling shareholder over other shareholders.

Capital Markets

Thailand's real GDP expanded by an average of 4 percent per year in 2000-07, strong by international standards, but somewhat below its growth rate in previous decades and that of other ASEAN members. The global economic crisis led to a sharp slowdown, with a 2.3 percent contraction in 2009, but the impact was limited: the economy grew by 7.8 percent in 2010. The historic flooding of 2011 led to a small contraction, however the economy grew 4.7% in 2012 and is expected to grow at 5.0 percent in 2013. Exports, especially of machinery and electronic components, have been a key source of growth for many years and continue to drive the economy.

The Stock Exchange of Thailand (SET) listed 558 companies at the end of 2012. Those listings were on two boards at SET—the SET and the Market for Alternative Investment (MAI), which focuses on smaller, fast-growing companies. MAI's market cap was 133 billion THB at the end of 2012.

Thailand has over 500 listed companies

The market has rebounded sharply since 2008

During the 2008 crises, Thailand's stock market fell sharply, losing almost half its market cap between 2007 and 2008. However, by 2010, the stock market had erased those losses and gained substantially more. By 2010, its market cap to GDP ratio (87.1) was higher than that of many high income countries as well as many countries in Asia, with the notable exceptions of Malaysia and Singapore. The SET index fell below the 400-point mark during the crash of 2008, but by the end of 2012 closed at 1391.93 points.

The market is actively traded and an important source of finance

At 104.8 percent, stock market turnover is higher than most other East Asian countries as well as the high-income OECD median. Also, the percent value traded among Thailand's top 10 traded companies is a relatively low 38% and top 10 market capitalization is comparable. While not a small fraction, this is lower than in many other comparable economies, and is a measure of the breadth of the overall market.

The SET is a key source of financing for Thai companies. In 2012, there were 18 IPOs for a total of 15 billion THB (471 million USD) and in 2011 12 IPOs which raised 4.95 billion THB (155 million USD). In addition, there were 20 corporate bonds issued on SET in 2012, for a total 168 billion THB and 8 worth 43 billion THB in 2011. Also in 2012, there were 5.1 trillion THB outstanding government bonds, and 0.68 trillion THB outstanding in corporate bonds.

All shares to be traded must be dematerialized in the Thailand Securities Depository (TSD), which is a wholly owned subsidiary of the SET. Clearing and settlement are done on a Delivery vs. Payment basis (DVP) at T+3.

Ownership

With a free float of 48 percent, corporate ownership in Thailand is not as concentrated as many other emerging market economies. However, the great majority of companies still have a controlling shareholder, albeit one that may often own less than 50 percent of shares. Shareholders include:

Family groups remain key players

- ▶ **Families and private controlling shareholders:** Traditional family groups are still an important part of the corporate landscape. Family groups control a range of companies through a mix of direct and indirect ownership and shareholder agreements. However, over the last 15 years smaller listed companies have emerged with owners outside of these groups.

SOEs include some of the largest listed companies

- ▶ **State Owned Enterprises:** The state owns 58 SOEs, defined as companies where the state has 50 percent or more of ownership, and has minority stakes in dozens of others. These include five listed companies in which the government holds a majority position, and another 12 in which it is a minority shareholder. The 58 SOEs have over 250,000 employees, assets of 6 trillion THB, revenue of 2.7 trillion THB, dominate key sectors (including energy production and distribution, transportation, and water), and are active in other areas. They include a number of large financial institutions, with about 30 percent of banking assets. (Annex discusses in more detail the eight specialized financial institutions (SFIs) under state ownership).

The five listed SOEs include the largest listed company in Thailand as measured by market capitalization--two of its subsidiaries are also in the top ten--as well as one of three the largest banks, and the national airline and the airport authority. The state's direct holdings in these

TABLE 1: Capital Markets: Thailand vs. Regional and Global Emerging Markets (2010)

	Number of Listed Companies	Stock Market Capitalization/ GDP (%)	Stock Market Turnover Ratio (%)	Market Capitalization 10 Largest Companies (%)	Percent Value Traded 10 Traded Companies (%)	Private Credit/GDP (%)
Thailand	539	87.1	104.8	45.4	38.1	97.
High Income OECD Median	196	57.6	71.1	52.9	69.6	114.4
Brazil	373	74	66.4	55.4	50.3	52.3
China	2063	81	164.4	23.3	8.4	132.3
Hong Kong SAR, China	1396	-	63.9	36.9	29.6	189
India	4987	93.5	75.6	27.6	21.9	49
Indonesia	420	51	48.1	40.6	42.3	26.0
Malaysia	957	172.6	27.1	37.0	37.4	114.8
Philippines	251	78.8	22.6	42.9	45.7	29.6
Russian Federation	345	67.9	85.7	60.4	95.5	43.0
Singapore	461	166.2	82.9	28.1	59.3	102.1
Vietnam	164	19.7	141.4	-	-	125

TABLE 2: Ownership of Listed Companies (as of December 31, 2012)

Type	Domestic	Foreign
Corporate	13.10%	0.76%
Individuals	51.60%	1.28%
Mutual Funds	1.75%	-
Pension Fund	0.99%	-
Insurance Companies	0.51%	0.28%
Securities Companies	0.11%	0.40%
Financial Institution	2.98%	0.41%
Foundation	0.01%	-
Others	11.77%	14.05%
TOTALS	82.82%	17.18%

FIGURE 1: Set Index 2008-2012



FIGURE 2: Market Capitalization as % of GDP (2008-2012)

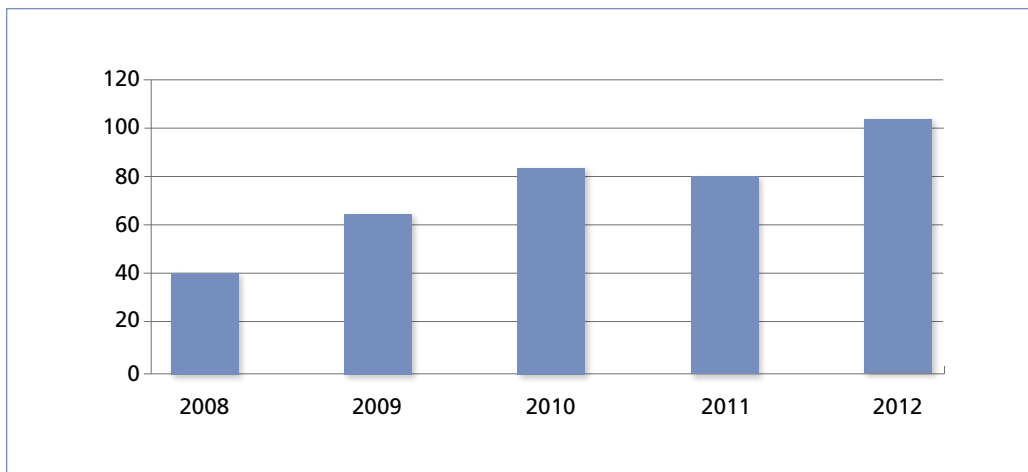
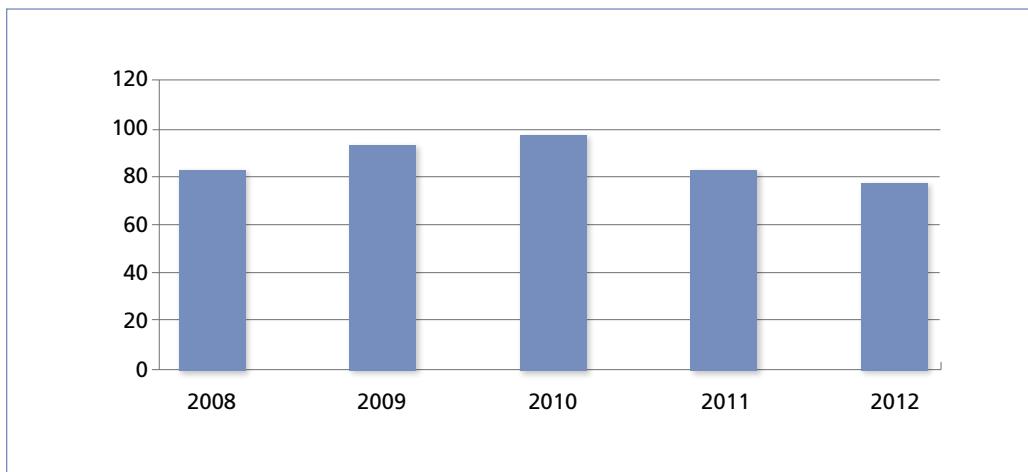


FIGURE 3: Turnover Ratio (2008-2012)



companies is estimated to be equal to about 15 percent of market capitalization. Most ownership is direct, but indirect ownership and control is also important, including through the state linked Vayupak Fund, which was allocated shares in advance of privatization firms.

► **Retail and foreign investors:** Domestic retail investors hold approximately 20 percent of overall market cap and institutional investors, foreign and domestic, another nine percent. Institutional investors include:

- The Social Security Office, which receives mandatory contributions from 10 million employees and employers and has 27 billion USD in assets,
- The Government Pension Fund, which has 1.1 million contributors, and
- 23 asset management companies which offer mutual funds, private funds, and provident funds (private pensions), and manage 87 billion USD in assets, mostly in mutual funds.

The combined value of the government pension funds and private provident funds, while not insignificant, are relatively small given the overall size of the Thai capital market, and especially when compared to neighboring countries including Malaysia and Singapore.

Foreign investors also holds Thai Non-Voting Depository Receipts (NVDR), an investment instrument created by the SET to allow foreign investors to invest in companies that otherwise have caps on foreign ownership, a practice allowed for and sometimes required under Thai law. These now account for over 10 percent of market cap and include both foreign institutional and retail investors, as well as some Thai investors.

Retail investors remain important in the market

TABLE 3: State Owned Enterprises

Listed Com	State Shareholder	% of Shares	State Linked Shareholder	% of Shares
PTT	MOF	51.11	Vayupak Fund	15.26
KTB	FIDF	55.07	Vayupak Fund	4.09
THAI	MOF	51.03	Vayupak Fund	15.50
AOT	MOF	70.00	None	-
MCOT	MOF	65.80	GSB	11.48
VAYU1	MOF	30.00	KTB & SMEB	30.5

The SEC has primary responsibility for the governance of listed companies

Laws and Institutions

Thailand has a civil law legal system with some common law influence, particularly in the framework for corporate governance. The **Public Limited Companies Act 1992** (PLCA) governs listed and other public companies (other corporate forms are governed by the Civil and Commercial Code; many of the relevant provisions are identical). The **Department of Business Development** (DBD) in the Ministry of Commerce is responsible for company registration and administers the act.

The **Securities and Exchange Commission** (SEC) is the principle regulator of the capital markets, including market intermediaries and listed companies.¹ The SEC and capital markets are governed by the **Securities and Exchange Act 1992** (SEA). The SEA has a wide-ranging scope and was amended in 2008 to include a number of provisions on the governance of listed companies, giving the SEC clear authority in these areas. The SEC also oversees the **Stock Exchange of Thailand** (SET). Its **Regulations for Listed Companies** and supporting notifications include key corporate governance requirements. The SET is also responsible for **The Principles of Good Corporate Governance for Listed Companies 2006** (Principles). The Principles are an update of the 2002 15 Principles of Good Corporate Governance and include recommendations made by the 2005 CG ROSC for Thailand.

The Thai IoD has been a pioneer in both training directors and rating the governance of listed companies

The **Thai Institute of Directors** (Thai IoD) was established in 1999 and has provided director training to about 5000 board members. Since 2000, it has produced the **Corporate Governance Report of Thai Listed Companies** (CGR), an annual “scorecard” that assesses and ranks the corporate governance of all listed companies based on publically available data, the CGR has served as a model for corporate governance scorecards now produced in Indonesia, Malaysia, and the Philippines. The Thai Investor Association also helps in preparing part of the CGR and actively participates in shareholder meetings on behalf of minority shareholders.

SOEs and banks have additional corporate governance guidance and oversight

The **Bank of Thailand** (BoT) is the central bank and responsible for regulating and licensing banks and other financial institutions. The Financial Institutions Business Act 2008 gives it broad authority to oversee bank corporate governance and the BoT has issued a range of supporting regulation.

The **State Enterprise Policy Office** (SEPO) in the Ministry of Finance is responsible for state owned enterprises (SOEs), including listed companies in which the state has either a majority or minority stake. It shares its ownership responsibilities with the relevant ministry in companies in which the state has a controlling stake, for example with the Ministry of Energy in oil and gas major PTT, the largest listed company. It has issued guidelines on corporate governance and related areas for SOEs.

The **Federation of Accounting Professions** (FAP) is the professional body responsible for Thai accounting and auditing standards, and for managing their convergence to international standards.

Together with the SEC, they also oversee the audit profession.

¹ The SEC also includes the Office of the Securities and Exchange Commission and the Capital Market Advisory Board.

Key Findings

The following sections highlight the principle-by-principle assessment of Thailand's compliance with the OECD Principles of Corporate Governance.

COMMITMENT AND ENFORCEMENT

Legal and Regulatory Framework

Since the 2005 ROSC, Thailand has experienced key changes to the legal and regulatory framework for corporate governance. This includes major additions to the SEA, a new banking act and supporting regulation to improve bank corporate governance, and the 2006 Principles of Good Corporate Governance for Listed Companies (Principles). The SEC and SET have also issued or revised a number of key regulations for listed companies.

When the SEC prepares draft regulations, it generally consults with focus groups and holds public hearings. It also post draft proposals online and provides at least 30 days for public comment. The SET and BoT follow similar procedures, and all seem to take feedback into account.

The SEA had a number of significant amendments in 2008. Key changes include clearer director duties and rules on conflicts of interest for directors, and introducing characteristics that would make an individual unfit to be a director. Shareholder's rights to amend the meeting agenda, approve certain major transactions, and have a greater role in changes in control protection were increased. Shareholders were also giving additional scope to bring suit against company officers, and a meeting resolution cannot be used to remove their liability. The amendments also increased protection for whistleblowers, strengthened requirements to disclose corporate control, and included provisions to increase the independence and professionalism of the SEC.

Some of these provisions would traditionally be placed in company law. By having them in the SEA, the SEC has direct authority to enforce them for listed companies and for securities companies, and can take enforcement actions against their directors and other officers.

These changes have been supported by new regulations which further clarify and expand their scope. While these and past notifications from the SEC and SET are useful in and of themselves, the various regulations and voluntary guidance issued over the years have been extensive and are not always well understood by market participants or easily accessible. It is not always clear what is mandatory and what is voluntary, or what the most current and relevant requirements are. There is also potentially confusing differences and overlap between the SEA and PLCA, as the SEA now contains a number of company law provisions.

Listing rules issued by the SET include key corporate governance provisions, including on procedures for related party transactions (RPTs), the functions of audit committees and the need for internal controls in listed companies, and disclosure of material information. SET rules also require listed companies to make a statement explaining the extent of their compliance with the Principles.

There has been extensive legal and regulatory change in Thailand since 2005

Stakeholders are consulted on new rules and regulations

Critical amendments have been made to the SEA, reinforcing the SEC's authority over listed companies

However supporting regulations and guidelines are not always well understood by market participants

Listing rules include important corporate governance provisions

The Principles include a range of good practices

The Principles of Good Corporate Governance for Listed Companies were introduced in 2006 and replaced the previous, and narrower, 15 Principles of Good Corporate Governance from 2002. They were brought closer to the OECD Principles of Corporate Governance and incorporated recommendations made by the 2005 corporate governance ROSC. The Principles cover a number of key areas and effectively supplement the SEA.

The scorecard prepared by the Thai IoD has helped motivate better corporate governance

Listed companies have strong levels of compliance with the Principles and other areas of good practice in large part due to the CGR prepared by the Thai IoD. This corporate governance scorecard, one of the first regularly conducted in an emerging market economy, provides comprehensive and widely recognized ratings of company governance based on extensive public information. Since its introduction, company scores have steadily improved. One concern is that companies have made nominal improvements to make their scores better. However, analysis done by the Thai IoD and others has also confirmed that high scoring companies deliver higher returns to shareholders, and market participants generally confirm the extent of corporate governance improvement.

The BoT has strong guidance on bank corporate governance....

The Bank of Thailand Act and the 2008 Financial Institutions Business Act grant the BoT wide ranging authority to oversee the governance of banks and other lending institutions. They are active in using this authority, screening who may be a director, senior manager, 5 percent or more shareholder, or auditor of a bank. The BoT has issued supporting regulation and guidance on bank corporate governance, disclosure, and related lending and confirmed the importance of risk management as a function of for bank boards, and the need for risk management board committees and disclosure.

...but there is less direction for financial conglomerates

While guidance and regulations for banks and securities companies (under SET) are clear, increasingly these and other activities like insurance are combined, at least under a common holding company. There is little guidance on how such financial conglomerates should be overseen or regulated beyond general requirements to separate certain activities (“Chinese walls”).

The SEC and BoT cooperate, but not always as effectively as some market participants would hope

The DBD, SEC, BoT, and SET all have clear areas of authority, with the SEC playing the lead role with respect to non-bank listed companies and the BoT with respect to banks. There are areas of overlap and the various bodies do seek to cooperate, meeting regularly and participating on the High Level Committee on Capital Markets, chaired by the Minister of Finance. However, there are no formal MoUs between the SEC and BoT or DBD, and they do not conduct joint inspections. Financial conglomerates can come under the jurisdiction of both the BoT and SEC, as well as other regulators like the Office of the Insurance Commission and there is no real framework for cooperation in this area. This limited cooperation in financial sector and capital market oversight is particularly problematic given the general volatility of global financial markets since 2007.

Enforcement

The Department of Business Development

The Department of Business Development (DBD) has authority over all companies under the PLCA as well as other kinds of registered businesses.² The DBD is self-financed with fees, which split with the national budget, and has adequate resources. The DBD collects fundamental documents from companies, including founders, articles, and annual reports, and makes some company information available online. Its records are electronic and can be searched and accessed relatively easily. It also has programs to raise awareness regarding corporate governance and other areas in each of Thailand's regions. It has 20 staff focused primarily on public companies. Beyond awareness raising, registration and collecting required information, it plays a relatively limited role, with many key corporate governance provisions in the SEA and under the direct authority of the SEC.

The DBD collects and make available electronically a range of company information

The Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is responsible for oversight of securities markets and has authority over listed companies and other issuers; dealers, brokers, and fund managers; and the SET. The SEC issues regulations and guidelines under the SEA, licenses capital market intermediaries, conducts investigations, and undertakes a range of enforcement actions. It also has authority over auditors of listed companies (see Key Issues: Disclosure and Transparency).

The SEC has wide ranging authority and powers...

The SEC's powers include administrative actions, such as warning letters, fines, and the suspension and removal of licenses. It may also issue directives to comply with relevant securities law and regulation. However the SEC may not initiate civil actions in court and may not collect damages on behalf of shareholders. In addition, the SEC does not have prosecutorial powers, but may refer criminal cases to the Department of Special Investigations (DSI) in the Ministry of Justice. This can be a source of delay as the DSI will generally launch its own investigations and may duplicate some of the efforts of the SEC.

...but it cannot initiate civil actions or claim damages for investors

The SEC has taken a number of enforcement actions each year of the last five years (2008-2012), including a number directly related to corporate governance. Under "issuance and offering of securities", primarily involving failures by companies to disclose their financial statements as specified by the SEC and directors and executives improperly reporting their acquisition and disposal of securities, the SEC took administrative actions against or reached settlements against a 188 persons, an average of 37 a year, and levied 10.07 million USD in fines, averaging 2.01 million USD a year. Over the last 5 years It also launched 181 criminal cases for these offenses, and the courts issued 48 judgments.

The SEC also took enforcement actions related to takeovers, market manipulation and insider trading, and corporate fraud. In February 2012, the courts sentenced 26 defendants in two cases for fraud in listed companies. It also actively enforces securities rules not directly related to corporate governance.

² There are approximately 500,000 partnerships and private companies that are to be registered with the DBD. There are approximately 900 public companies.

TABLE 4: Legal actions taken under the Securities and Exchange Act

Offense	2012		2011		2010	
	SETTLEMENT (PERSON)	FINE (USD) [†]	SETTLEMENT (PERSON)	FINES (USD) [†]	SETTLEMENT (PERSON)	FINES (USD) [†]
Securities business	12	109,759	17	175,868	18	184,070
Asset management business	6	52,974	7	41,383	16	113,202
Unfair securities trading activities	7	2,767,283	24	3,208,750	5	68,069
Securities acquisition for business takeover	-	-	0	-	3	70,186
Issuance and offering of securities [‡]	31	405,861	33	188,935	21	82,398
Corporate fraud	-	-	-	-	-	-
Others	-	-	-	-	-	-
ANNUAL TOTAL	56	3,335,877	81	3,614,937	63	517,927

TABLE 5: Criminal complaints under the Securities and Exchange Act

Offence	No. of persons			
	2012	2011	2010	2009
Securities business	1	-	1	-
<i>Failure to comply SEC Rule</i>	-	-	1	-
<i>Unlicensed securities business</i>	-	-	-	-
Unfair securities trading activities	21	12	3	2
<i>Market manipulation</i>	-	8	3	2
<i>Insider trading</i>	-	4	-	-
Securities acquisition for business takeover	-	-	2	-
Issuance and offering of securities	35	26	9	7
Corporate fraud	4	1	18	18
Others	9	3	2	1
ANNUAL TOTAL	71	42	35	28

TABLE 6: Court Judgment under the Securities and Exchange Act

Offence	No. of offenses			
	2012	2011	2010	2009
Securities business	15	1	-	-
Unfair securities trading activities	2	-	-	-
Securities acquisition for business takeover	-	-	-	-
Issuance and offering of securities	-	8	8	2
Corporate fraud	2	2	-	-
Others	-	2	1	-
ANNUAL TOTAL	19	13	9	2

[†] Exchange rate 1 USD = 31.83 THB

[‡] Issuing companies failed to duly disclose their periodic financial statements as specifies by the SEC, Executives of issuing companies failed to report their acquisition and disposal of securities

The SEC is well resourced, with a 2011 budget of 756 million THB (25.2 million USD). It has 360 professional staff, out of 470 staff in total. The SEC pay scale is not tied to the civil service pay scale, and is considered competitive with other regulators and the private sector. The SEC has a range of training options and requirements for its staff. It is self-financed: in 2011 its revenue was 1,065 million THB.

The SEC has a large staff and pays competitive salaries

While self-financed, the SEC is not entirely independent from the government. It is a statutory body with a distinct legal personality, however it reports to the Ministry of Finance (MoF). The 2008 amendments to the SEA did increase its independence, for example the Minister is no longer the *ex-officio* chair. The Chairmen is now chosen by the Cabinet at the recommendation of the MoF. The SEC Secretary General, its chief executive, is chosen by the Cabinet on the recommendation of the Securities and Exchange Commission. The 2008 amendments also established expert commissioners and expert members of the Capital Market Supervisory board chosen with the assistance of an independent selection committee.³ The Minister may also recommend the removal of the chair. MoF must also approve licenses to securities market intermediaries, at the recommendation of the SEC.

The SEC is operationally independent, but reports to the government and MoF

The SEC has been largely free from scandal and has a positive reputation in the eyes of market participants. The resignation of the SEC Chairman in 2011⁴ confirmed the desire of the institution to maintain its reputation with market participants.

Stock Exchange of Thailand

The Stock Exchange of Thailand (SET) is an independent legal entity whose governance structures are set out in the SEA. Its board of governors consists of five SEC appointments, and five representatives of the SET member brokers, who also participate in annual general meeting of the SET (but are technically not considered owners or shareholders). While not a company under the PLCA, the SET seeks to apply good governance practices, including producing an annual report, having a separate board chair and chief executive, and encouraging training for its board members and use of board committees. It has long standing plans to demutualize and become a listed company, which would require it to meet the standards of a listed company. Its board however may not have independent members, as required for SET listed companies, and some have questioned if the nomination process for its board members always brings in the most qualified candidates.

The SET is state owned and has broker members

³ The selection committee is to be composed of persons having been in the positions of the Permanent Secretary of the Ministry of Finance, Permanent Secretary of the Ministry of Commerce, Secretary-General of the Council of State, Secretary-General of the National Economic and Social Development Board, Governor of the Bank of Thailand, or Secretary-General of the SEC or commissioner in the SEC. None may currently be in government or parliament.

⁴ The Chairman, in his personal capacity, had allegedly intervened in a shareholder dispute for a listed company, representing a undeclared group of shareholders acting in concert.

The SET is profitable with about 4.1 billion THB in operating revenue (137 million USD) in revenue and a 2.54 billion THB budget. This is used to support of departments and professional staff engaged in enforcement and ensuring companies comply with Listing Requirements:

Market Surveillance: 17 persons
 Listed Company Oversight: 22 persons
 Enforcement: 7 persons

The SET can amend its Listing Requirements, with SEC approval, and issues supporting guidelines and documents. It engages in real time market surveillance to detect irregular or suspicious trading and actively monitors the required filings of listed companies. Its primary avenues for enforcing its rules are enquiries, warnings, and suspending or halting trading. It can also bring administrative penalties against either listed companies or its members, but does so infrequently. In 2011 the SET launched 155 enquiries, halted trading 20 times, and suspended trading 78 times. It also penalized one of its broker members and 3 listed companies.

The SET also host seminars for the public and officers in listed and member companies. It also has a corporate governance team that works to improve governance in specific listed companies, usually smaller ones.

Bank of Thailand

The BoT approves bank auditors, directors, and major shareholders

The Bank of Thailand (BoT) is the central bank and has authority over commercial banks and other lenders. The BoT can and does issue regulations (through the Financial Institutions Policy Board) and guidelines, conduct examinations and inspections, and take a range of enforcement actions. It seeks to ensure that banks have strong corporate governance and effective risk management systems in place, and approves, and can reject or remove, directors, external auditors, and shareholders with five percent or more of shares.

The BoT employs risk based supervisions and has the resources to monitor financial institutions and subject them to extensive scrutiny, as needed. The BoT is largely independent in its ongoing operations, but is not completely independent of the government. The governor is appointed by the king on the advice of cabinet, reports to cabinet, and can be removed, with cause on the advice of the minister by cabinet. The MoF also has the authority to license banks, on the BoT's advice. In recent years, the BoT has seemed to become more closely involved in government policy, for example taking over certain obligations previously held by the government through the MoF.

Oversight of SOEs

SEPO shares oversight of SOEs with line ministries

The State Enterprise Policy Office (SEPO) in the Ministry of Finance (MoF) is responsible for exercising the state's ownerships rights and ensuring good corporate governance in SOEs (which are classified as companies were the state has majority ownership) and in companies were the state is a minority shareholder. SEPO is the secretariat for the State Enterprise Policy Committee, a Cabinet level committee chaired by the Prime Minister, and as such has the power to help set policy for SOEs, monitors their performance, and carry out certain ownership functions. In SOEs,

including listed one, ownership is effectively shared with a sectoral “supervising” ministry: the Ministry of Energy, the Ministry of Transportation, and so on. This supervising ministry usually has the most influence in terms of ongoing decision making in the SOE. The supervising ministry generally also sets broader policy for the SOE and sometimes carries out regulatory functions or oversees the regulator.

In Krung Thai Bank PCL. (KTB), the listed state owned bank, as well as in non-listed state financial institutions, the Fiscal Policy Office in the MoF acts as the supervising ministry, and does so largely independent of SEPO. In 2011 the World Bank conducted an in depth review of the eight state owned specialized financial institutions (SFIs), this is summarized in Annex.

Both the MoF and the supervising ministry are represented by senior civil servants on SOE boards of directors. Other government officials are usually also on the board. For example in PTT, the largest company by market capitalization on the SET, the board includes:

- ▶ The Permanent Secretary, Ministry of Energy (Chairman);
- ▶ The Director General, Department of Alternative Energy Development and Efficiency, Ministry of Energy;
- ▶ The Director General, Excise Department, Ministry of Finance;
- ▶ The Attorney General (listed as independent and chair of the audit committee);
- ▶ The Permanent Secretary, Ministry of Foreign Affairs (listed as independent);
- ▶ The Secretary General of the National Economic and Social Development Board (listed as independent and chairman of the remuneration committee);
- ▶ The Advisor to the Secretary of the Minister of Defense (listed as independent);
- ▶ The Commanding General, 1st Division King’s Guard (listed as independent);
- ▶ The PTT President and CEO and one other PTT executive; and
- ▶ Four board members without direct state affiliation, three from the private sector and one academic.

Out of 15 members on the PTT board, nine are state employees, and six of those are considered to be “independent”. Other majority-owned SOEs tend to also have heavy state representation. Companies in which the state has a minority stake and the major subsidiaries of SOEs also tend to have at least a few senior civil servants or other state employees on their boards.

Civil servants are paid the same amount as other board members, which can be substantial in listed companies, especially for the chairman. They do also face liability for being board members and for being civil servants, and some SOE board members have been sued on that basis.

Listed SOEs have a number of civil servants on their boards

Civil servant directors often change when the government changes and when they are assigned to a new position in the government. This leads to generally high turnover on SOE boards.

SEPO has improved SOE governance

SEPO has taken a number of steps to improve the corporate governance framework for SOEs. They have issued guidelines on SOE governance, revised in 2009. Like listed companies, SOEs are required to produce annual reports, have audit committees, and have an internal audit function. SOEs have performance agreements with key performance indicators (KPI) and targets, and SEPO monitors these with the Thailand Rating Information Service (TRIS), which has been contracted by SEPO for this purpose. SOEs are required to disclose their KPI in State Enterprise Reviews, which also include a “statement of direction”, financial data, and operations under government policies. These are available on the SEPO website.

But little guidance is provided on key areas where the state acts as owner

SEPO has also introduced a director’s pool for independent board members on SOEs. This is only required for one third of non-state board members, so in practice usually one or two per board. There is little guidance from SEPO on the appointment of other board members or more generally how the state should exercise its ownership rights, and the relative powers of SEPO and the line ministry can be somewhat unclear. SOEs are required to submit planned investments to the government and the National Economic and Social Development Board. They must also follow certain rules on human resources for SOEs, though these tend to be looser for listed ones. For example employee pay, and, especially, board sitting fees tend to be higher in listed versus non-listed SOEs.

Transactions between SOEs are generally not treated as RPTs

In the listed SOEs, the state retains both large direct ownership and has significant indirect ownership, allowing them to dominate the shareholders meeting, including things like board appointment or approval or major or related party transactions (RPTs). Transactions between SOEs may not even be classified as RPTs, and there is no guidance or framework for classifying these transactions.

In companies where the state is a minority shareholder, SEPO is a relatively active investor. They often appoint 1 or 2 board members, participate in the shareholders meeting, and review information from companies. They do not always side with management or the board, but unlike some Thai institutional investors, they do not have a formal voting policy or report how they vote in the shareholders meetings.

The Courts and Alternative Dispute Resolution

Courts are relatively easy to use

Based on World Bank data (see table below) courts in Thailand are less costly to use than the average in either East Asia or OECD countries, take somewhat less time, and have a comparable number of procedures. Specialized courts have been established for intellectual property and international trade, taxation, and bankruptcy, but not for (other) securities or corporate matters. However the SEC and others provide training to judges in these areas.

The SEA and the PLCA⁵ allow for shareholders to bring derivative suits, that is on behalf of the company, against directors. Few of these suits have been filed, and the SEC cannot bring suits on behalf of shareholders. Class action suits are not possible, and direct suits by shareholders will generally not be successful.

But may still provide limited redress to shareholders

TABLE 7: Doing Business 2012: Enforcing Contracts Indicator

Indicator	Thailand	East Asia & Pacific	OECD Average
Procedures (number)	36	37	31
Time (days)	479	519	518
Cost (% of claim)	12.3	47.8	19.7

Arbitration and alternative dispute resolutions are well established in Thailand. In practice, parties to a contract often select arbitration as their dispute resolution mechanism. The court will enforce the arbitral award after the arbitration process is carried out. The court also provides mediation services and senior judges are available to help settle disputes.

Alternative dispute resolution is established,

SHAREHOLDER RIGHTS

Basic Shareholder Rights

Basic shareholder rights are well established in Thailand. Shareholders in listed companies may freely trade their shares and have access to secure shareholder record keeping through the Thailand Securities Depository (TSD). Under the Public Limited Companies Act 1992 (PLCA) shareholders have the right to obtain financial statements, company articles, and the list of shareholders. SEC regulations require disclosure to shareholders of other information on ownership and share classes and SET listing rules require the publication of the minutes of the GMS.

Shareholders freely trade their shares, and basic shareholder rights are largely in place

The PLCA also gives shareholders the right to approve board members and remove them at the GMS, though removal requires approval of three quarters of attending shareholders who between them have a majority of voting shares. Shareholders also approve and receive dividends proportional to their shareholdings. Changes to a company's articles and authorized capital require the consent of three-quarters of the shares voted at the GMS.

⁵ The PLCA allows for shareholders to bring a derivative suit if action taken by the board may damage the company. There is no provision that would allow them to cover litigation cost.

Shareholders actively participate in the general meeting

Shareholder Meetings

Under the law, shareholders have the right to attend and vote at the GMS, and do so in the hundreds and thousands. The Principles recommend that the board should inform shareholders of the criteria and procedures governing the company's shareholders meetings, including voting procedure. SET rules require disclosure of meeting results, and the law allows for confidential voting if shareholders call for it.

Meeting notice can be as short as 7 days

According to the PLCA, the notice of the GMS must be sent to the shareholders not less than 7 days prior to the meeting date. However, if certain extraordinary transactions are to be approved, the notice of the GMS must be sent to the shareholders not less than 14 days prior to the meeting date. This is much shorter than the 21 days other countries specify companies allow for shareholder meeting notice and materials to be delivered. In practice, 71 percent of companies do give at least 30-day notice, but other companies give much less notice. Shareholders are to receive the meeting agenda together with the notice and, according to a voluntary Annual General Meeting checklist from the SEC, other relevant information, like particulars on proposed board members.

The Principles call for the chair to encourage shareholder questions, both in the meeting and in written questions before the meeting. In practice, shareholders can generally ask questions at or before shareholder meetings. Board members usually, but not always, give clear answers.

Postal voting is not allowed

The law allows for voting by proxy, which is widely used. Electronic and postal voting are not allowed. Many foreign and some local shareholders make use of custodians, and SEC Regulation states that the custodian shall enter into a written agreement with the client and "perform necessary actions in due course in order to have the client obtain any benefits arising from being owner of any securities or any instruments which are kept with the custodian". Hence this could be interpreted as requiring the custodian to pass on relevant information or vote on behalf of beneficiaries, but these are not explicit in law. There is no requirement for custodians to disclose their voting policies or votes.

Foreign investors face barriers to full participation in listed companies

Under Thai law, foreign ownership is limited in certain companies, for example 25 to 49 percent of shares, and no more, in certain financial institutions. To allow for foreign investment beyond these limits, the SET has introduced Thai Non-Voting Depository Receipts (Thai NVDR) which allow shareholders to exceed these limits and receive dividends or capital gains, but which provide no control rights. Thai NVDR have become relatively popular and are some of the largest shareholders (as a block) in some companies. The holders of Thai NVDR are not disclosed, and it's unclear if all the beneficiaries are actually foreigners.

Many institutional investors participate in GMSs and vote

The SEC requires asset management companies to participate and vote in the GMS and the Association of Investment Companies provides guidelines to assist members in developing voting policies. SEPO, the Social Security Office, and the Government Pension Fund (GPF), do not fall under this guidance, but the GPF has its own voting guidelines and each generally also participate in shareholder meetings. The SEC also requires asset managers to disclose their voting records and criteria and the Association of Investment Management Companies discloses voting by its members. Other investors generally do not disclose voting.

Participating in Board Appointment and Capital Increases

While shareholders approve the choice of board members at the GMS, non-controlling shareholders have limited options to influence who is actually put on the board. The Principals recommend that the board and its nomination committees consider proposals from any shareholders. While the PLCA allows for cumulative voting—which would facilitate minority shareholder representation on the board—in practice the articles of most companies do not allow for it. In most companies, each director is voted on individually, and the controlling shareholder can generally choose each one. According to the Thai IoD CGR, 63 percent of companies facilitate minority shareholders nominating board members, for example being able to do so through the company website, however their influence on final board selection is limited.

Minority shareholders have limited influence on director selection

Increasing a company's capital by issuing new shares requires the approval of three quarters of shares at the GMS, and SEC regulation requires the shares to be issued with one year of the decision. Existing shareholders have pre-emptive rights to participate in the share increase, unless the resolution waives them and designates another party or way to sell the shares.

A supermajority must approve share issues

Related Party and other Extraordinary Transactions

The SEA includes detailed provisions on disclosure and shareholder approval of related party and major transactions. Unless the transaction meets each of the following conditions: 1) the company would normally undertake it for its business operations, 2) it is conducted under “general trading conditions”, essentially market prices and not giving disproportionate benefits to one party or another, and 3) the value of the transaction is clear from underlying assets; then the transaction has to be disclosed—including terms, valuation, financing, connected parties, and confirmation that conflicted directors did not approve it— if it is greater than 1 million THB or .03 percent of the assets of the company and approved by shareholders if its greater than 20 million THB or 3% of the assets.

Related party transactions must be disclosed and large transactions approved by shareholders

The SEA defines related parties, including managers, directors, shareholders with 10 percent or more of shares, and persons or companies connected with them. Interested directors and shareholders must recuse themselves and may not vote to approve the transaction. Under Thai Financial Reporting Standards (TFRS) related party transactions must also be disclosed in the annual report. Banks have additional requirements for lending to connected parties, as discussed below.

Shareholders also have to approve extraordinary transactions, such sale of all or a substantial part of the business, purchase of another business, amalgamation with another business, or entering into a contract or lease involving the whole or a substantial part of the business. These transactions require three quarters of the votes of shareholders at the GMS.

But related party transactions rules may not always be implemented effectively

In practice, companies generally comply with these requirements, disclosing required information on related party transactions, and getting shareholder approval when required. However, the 14 day meeting notice may not always give shareholders adequate time to study or vote on these transactions. Incomplete disclosure of beneficial ownership and control may allow interested parties to influence the approval. Some market participants have noted that these transactions almost always are approved, even when their merits are questionable. In addition, it is unclear if most SOEs are disclosing or effectively managing all transactions with other SOEs. The SEC has sought to increase oversight of RPTs and does occasionally require revisions to their terms or cancel them outright.

Tenders are required at 25, 50, and 75 percent ownership

Changes in Corporate Control

Under the SEA and regulations issued by the SEC, when a person or persons acting in concert reach 25 percent, 50 percent, or 75 of ownership, they must make a tender offer to all other shareholders. The offer price must be at least as high as that paid by the offeror in the last 90 days. The offer document must contain detailed information and the offer must be open to shareholders for at least 25 days.

Anti-takeover devices require shareholder approval

SEC regulations contain various provisions to prevent abusive anti-takeover tactics or tactics that might favor certain shareholders. Directors are to provide their opinion on accepting or rejecting the offer, including the impact of accepting or rejecting it. Potential anti-takeover mechanisms also require shareholder approval, including for example capital increases, acquisition or disposition of material assets, creation of indebtedness or entering into, amendment or cancellation of a material agreement which are not in the ordinary course of business of the company.

In practice, these procedures are generally complied with, though there have been cases of inadequate disclosure of acting in concert to take or influence control of a company. There are also some gaps in the legal framework; outside of a takeover, it does not appear that shareholders can insist on the controlling shareholder buying them out, even when the controlling shareholder has 90 percent or more of shares, nor is there is a squeeze out right, under which they can buy out a small number of remaining shareholders.

Insider trading is prohibited

Protection from Insider Trading and Self-Dealing

The SEA prohibits trading shares with material information that has not been provided to the public. It also prohibits market manipulation by, for example providing misleading information to the market. Directors have 3 days to report details on their trading in the company's shares, or the trading of their spouse or minor children. The SEC has also provided guidance that directors should not trade around the time that financial results are published.

The SEC and SET actively monitor the market

Both the SEC and SET engage in real time surveillance of potential irregularities in trading patterns and share price movements, with special attention given to trading by insiders. The SEC has taking various enforcement actions in response to possible market manipulation and insider trading, including fining a number of individuals and taking other administrative actions, and has 17 criminal complaints. There were 4 convictions in court in 2011.

Other restrictions on self-dealing include the RPT rules noted above, and restrictions to monitor and avoid conflicts of interest, discussed in the Board section below. The PLCA requires shareholders to approve director remuneration, but this is generally not interpreted to include the CEO⁶ or other executive directors. Shareholders are empowered to approve stock options and other stock based pay for both non-executive and executive directors, as well as other employees.

Shareholders approve board, but not CEO, compensation

Shareholder Redress

Short of going to the SEC, or selling their shares, shareholders, especially minority shareholders, have limited redress in the face of potential problems or abuse originating with the board or management. 25 or more shareholders with at least 10 percent of shares may call for a GMS and shareholders with at least 20 percent of shares, or one third of all shareholders (that is potentially hundreds or thousands of shareholders) may ask the DBD to appoint an inspector for the company. Shareholders may sell their shares back to the company, but only under very limited circumstances: if they vote against changes to the articles in relation to the right to vote or receive dividends. As noted, their ability to influence the GMS agenda, choose board members (if in the minority), or overturn CEO pay are all limited.

Shareholders face limits when seek redress from the company

In 2008 the SEA was amended to allow shareholders to bring derivative actions against directors and company officers for violating their duties on behalf of the company. Shareholders cannot collect damages directly from the company or director under the PLCA or SEA. There is no “oppression” remedy that gives minority shareholders a general right to sue for bias or abuse, nor is there the concept of shadow directors to bring actions against those who influence the company but are not technically directors. In practice, few shareholder suits have been filed.

Shareholders can bring derivative actions, but shareholder suits are rarely filed

DISCLOSURE AND TRANSPARENCY

Company Reporting

As required by law, listed companies produce audited financial statements that include a balance sheet, and statements of cash flow, income, and changes in equity, together with comprehensive notes. Statements are consolidated as needed. Statements are prepared using Thai Financial Reporting Standards (TFRS). TFRS now largely consist of Thai translations of IFRS and are of comparable quality, though some differences remain.⁷

Companies produce complete financial statements largely consistent with IFRS

Since 2008, the Federation of Accounting Professions (FAP), the professional body for accountants and auditors, has been actively converging TFRS to International Financial Reporting Standards (IFRS). Current plans are to have full convergence by 2013. FAP holds hearings, seminars, and work with focus groups on proposed changes and offer a range of courses for their members. While accounting quality is generally high, market participants confirmed that many listed companies are still working to effectively implement TFRS and that there is still a need for ongoing capacity building.

⁶ Companies produce complete financial statements largely consistent with IFRS

⁷ TFRS are generally based on 2009 IFRS and have not all been updated to 2012. IFRS 4 (insurance contracts), IFRS 7, IAS 32 & IAS 39, (financial instruments), IAS 12 (tax recognition), and IAS 41 (agriculture) have not been fully incorporated into TFRS. And there are six standards found in TFRS not in IFRS, mostly involving financial matters.

Practically all listed companies have websites. According to the Thai IoD CGR, 98 percent of company websites disclose information on business operations, 85 percent post an annual report, and 78 percent have financial statements. 86 percent had investor relations information and 87 percent posted the notice for the shareholder meeting. 77 percent of companies have websites available in both Thai and English. Relevant information is also passed on to the SET through its ECLID system, which is then placed online.

This includes material information, which is defined by SET guidelines. Selective disclosure of material information by insiders is prohibited under the SEA.

Non-financial Disclosure

Annual reports include company and industry trends, and disclosure on risks

Annual reports should include disclosure of vision, mission, and purpose of the business. Company objectives must be provided to the DBD when the company is registered. The annual report should also include a management analysis and discussion including highlights of financial results, operations, and future prospects. According to the Thai CGR, 99 percent of companies disclose on business operations including future trends. However only 30 percent of reporting on business operations and future trends was considered comprehensive and informative. 74 percent disclose a vision/mission statement from the board.

Listed companies are required to publicly disclose foreseeable risk factors, risk management and internal control policies. TFRS also require disclosure on certain financial risks. According to the Thai CGR, 91 percent of companies confirmed that the board had a risk management policy in place and 98 percent had clear statements on operational risks. Banks generally disclose detailed risk management statements.

Major shareholders are disclosed...

Under the SEA, shareholders with 5 percent or more of shares are required to disclose changes to those holdings to the SEC, which in turn makes the information available online. Companies are also required to disclose their top ten shareholders as well as the company's group structure, including major holdings and subsidiaries. Direct shareholdings are generally disclosed by shareholders and companies, as are major holdings or subsidiaries.

...indirect shareholdings often are not

Disclosure of indirect control, for example through shareholder agreements, nominee or custodian accounts, or through intermediate holdings, is not always as complete, though it would seem to be required under SEC regulations. In company annual reports and websites, shareholder agreements and the holders of nominee or custodian accounts are rarely disclosed.⁸ Control through other companies is sometimes disclosed, as is wider group structures, but not always.

Shareholders also report control information directly to the SEC, and this reporting of ownership and control to the SEC may be better. Some market participants also dispute the need to report on things like shareholder agreements—unless there is an active attempt to take control of the company or the company is a party to the agreement—and the SEC itself may be challenged in determining ownership or control when offshore entities are involved.

⁸ This includes shares held through Thai NVDR. These do not have voting rights, and so control would not seem to be an issue, however in some companies there remains the possibility that large blocks of shares are being held and not disclosed. If needed, the SEC could confirm the beneficiaries of the NVDR

Directors are also required to report their shareholdings in the company well as the holdings of their immediate relatives, and report any change into those holdings to the SEC within 3 business days. Listed companies are encouraged to disclose information about board member qualifications, other directorships they may have, and their meeting attendance, as well as whether individual board members are considered independent. Companies are encouraged to disclose criteria for independence only when it is stricter than what is in the law. According to a voluntary AGM checklist from the SEC, companies should also provide details on those nominated to the board as well as current directors.

Companies disclose details on director qualifications, shareholdings and meeting participation

According to the Thai IoD CGR, 95 percent of companies disclose each board members and their meeting attendance record, and 87 percent disclose education and experience. 20 percent said that their company uses independence criteria that are more stringent than the SET/SEC definition and 71 percent confirmed that each director that was independent using the SET/SEC definition, but not why they are considered independent. For non-independents they generally give some, but not always all, the information on why they not be independent. All companies disclose director shareholdings. For new candidates to the board, 70 percent of companies provide relatively complete background information and 29 percent provide name and partial information.

Companies are required to disclose board member remuneration on an individual basis but can disclose executive (including executive directors) remuneration on an aggregate basis. In practice, companies disclose aggregate director remuneration and 86 percent disclose remuneration of individual directors. However, only 48 percent said that the basis of the boards' remuneration was disclosed in some detail, that is by type, position or duty performed. More companies tend to disclose on the basis for remuneration of key executives, but generally do not disclose individual executive pay.

Board member remuneration must be disclosed

Companies are required to disclose information on related-party transactions in a timely matter to the SET when the transaction is more than one million THB or 0.03% of the net tangible asset value, whichever is higher. If the transaction is under "general trading conditions", or on market based terms as defined in regulation, it does not necessarily have to be disclosed. TFRS also require disclosure on related party transactions (RPT) in the annual report. Companies disclose on RPTs, but disclosure of RPT details can often be cursory. Inadequate disclosure of beneficial information may also limit disclosure of all RPTs.

RPTs must be disclosed to the SET....and in company annual reports

Companies are required to disclose material issues regarding their employees and on policies regarding environmental and social issues. There are no general rules regarding disclosure of creditor issues.

CSR is disclosed, though disclosure relating to creditors is often weak

In practice, disclosure on these issues runs the gamut. Companies normally disclose some issues regarding their employees on the annual report and make reports related to corporate social responsibility, but the specifics vary greatly across companies. According to the CGR only 33 percent gave relatively comprehensive disclosure on their policy towards creditors, though financial institutions generally provide relatively complete information on creditors. Disclosure on other stakeholders and the environment also varies widely across companies.

Audit and Audit Oversight

Thai audit standards are converging to international ones

All companies are required to produce audited financial statements. Audits are based on Thai Audit Standards, which are issued by the FAP and have incorporated a number of elements from International Standards on Auditing (ISA). The FAP has translated full ISA into Thai and auditors are to begin following them later in 2012. Auditors are appointed by shareholders, usually on the recommendation of the board and/or audit committee.

Audit oversight has increased in recent years...

To audit a listed company requires being a licensed member of FAP and approval by the SEC. Maintaining the license requires 12 hours of continuing education each year. To audit a bank also requires the approval of BoT.

The FAP is a self regulatory body for the accounting and auditing profession and has responsibility for ensuring that audit standards are met. It is overseen by the Oversight Committee of the Accounting Professions, which is chaired by the Permanent Secretary of the Ministry of Commerce and which includes a number of other government officials. The DBD acts as a secretariat to the committee. The FAP reviews some audit work, primarily for non-listed companies, and its Ethics Committee is responsible for investigating and sanctioning possible violations of professional conduct. In recent years the committee has examined 70 cases and suspended 5 licenses.

...but may not be enough given 500+ audit engagements each year

In 2010 the SEC began direct oversight of auditors and audit firms for listed companies. The SEC has 20 staff focused on audit and aims to review each audit firm at least every three years and each “big four” auditor annually. It has focused especially on compliance with standards for quality control (ISQC1). In 2011 the SEC suspended 2 audit licenses and brought 1 criminal case. It has also requested improved practices in a number of audit firms. While enforcement through both the FAP Ethics Committee and by the SEC has increased in recent years, it’s unclear if resources are available to effectively review a significant portion of the 500+ audit engagements that take place each year for listed companies.

Auditors have independence requirements but can still provide a range of non-audit services

SEC regulations require audit partners with a particular client to rotate after 5 years. Under the PLCA, the auditor cannot be an employee or director of the company. Listing rules note that the audit committee of the company’s board should choose an independent person to be the auditor, and report to shareholders on their deliberations.

FAP requirements on independence are largely in line with the IFAC (International Federation of Accountants) Code of Ethics, and SEC regulations for auditors in listed companies explicitly refer to the IFAC code. These are interpreted as restricting the auditor from providing accounting or internal audit services, as well as advice on strategy and tax computation. This interpretation is consistent with IFAC guidance, but is not an explicit part of the IFAC code or any rules in Thailand. Other consulting and non-audit services are permitted and regularly combined with audit work, and auditors still often provide advice related to accounting.

SOEs are audit by a public sector auditor

Auditors in SOEs are generally not audited by outside audit firms, but by the Office of the Auditor General (OAG). While the OAG is certainly a force for vigilance in the public sector, the OAG does not always have the needed expertise to audit complex financial statements produced by listed companies.

Other Reputational Agents

Thailand two credit rating agencies, as well as asset managers and securities companies (brokers and investment banks) all come under SEC regulations that address conflicts of interest and related areas. Some, though not all conflicts, must be disclosed. Policies on managing such conflicts are generally not.

There is limited disclosure of conflicts of interest by capital market intermediaries.

BOARD PRACTICES AND COMPANY OVERSIGHT

Composition and Selection

Boards in Thailand have executive, non-executive and independent directors. Listed companies are required to have at least one third of the board, and three members, be independent, both of the company, its management, and major shareholders. Other non-executives are major shareholders or connected to major shareholders. In practice, according to the Thai IoD CGR, 72 percent of boards have at least two thirds non-executive directors, and 89 percent of board are between one third and one half independent, with a small number of companies having more than 50 percent independent directors. Companies generally disclose which director falls into each category, but they do not usually disclose why a particular director would be considered independent.

At least one third of the board of a listed company will be independent

Boards tend to be relatively large, commonly composed of between 12 and 20 members. In most countries, boards of this size are considered less effective than smaller boards due to the difficulty of coordinating, agreeing, and even discussing decisions among so many members. However, in Thailand, many directors seemed comfortable with large boards.

The Principles encourage the separation of the board chairman position from that of the CEO. In practice, 89 percent said that their board chairman is separate from the CEO. However, only 30 percent of companies confirm that the chair is an independent director. In many cases, they may be or may be connected to the controlling shareholder. In some cases, they act as de-facto CEO, with the titular CEO as a deputy.

Board chairmen are usually separate from the CEO, but the chair is not always independent

The Principles call for the board nomination and election process to be run by nomination committees, a majority of whose members are independent directors. In practice, most companies have a nomination committee, but only 34 percent were composed primarily of independent directors. While minority shareholders may make suggestions on board candidates to the committee, controlling shareholders still have significant influence on director selection. This includes SOEs, where the supervising ministry and MoF dominate board selection.

The BoT applies a fit and proper test to directors as well major shareholders and senior officers in banks. More recently, the SEC has also developed criteria for board members in all listed companies to screen those that have “untrustworthy characteristics”. These are described in some detail and include insolvency, being named in a securities related legal complaint, being recently imprisoned or having caused damages to shareholders or other investors. The SEC periodically releases the names of those who are not considered fit to be board members, and maintain a list, available through their website, of thousands of possible directors who are considered trustworthy.

Both the BoT and SEC have fit and proper criteria

Board Duties and Responsibilities

Board members have explicit legal duties to the company

Section 85 of the PLCA, and Section 89/7 of the SEA state that board members are required to carry out the business of the company with responsibility, due care, and loyalty. The duty of loyalty is defined as acting in good faith for the best interest of the company, with purpose and not in a way that conflicts with the company's interests. The duty of care is defined as making well-informed decisions in the best interest of the company and without conflicts of interest. The SEA also includes a "business judgment rule" that clarifies when a director may be liable for violating his or her duties.

Directors in most companies take these duties seriously and many learn about their duties through director training. The Principles encourage directors to treat all shareholders of the company fairly and equitably. In practice, while boards seem to do a better job of taking into account the interests of minority shareholders, many still favor the interests of the controlling shareholder.

Boards are encouraged to review company strategy

The Principles state that boards should review company strategy, risks, business plans and budget, as well as monitor management performance. The Principles also encourage boards to develop both general corporate governance policies and risk management policies. In practice, boards do review and approve company budgets and business plans and have risk policies in place. Most larger companies also have key performance indicators for the company and management.

Board committees are encouraged to nominate, evaluate, and set compensation for senior executives

The PLCA and Principles imply, but do not explicitly state, that the board should choose the CEO. Similarly, the PLCA does not give the board the power to dismiss the CEO. Instead, if the CEO is a director, the power of dismissal lies with the GMS. The Principles do note that the responsibility of the nomination committees in selecting qualified candidates as senior executives for the board's approval. The Principles also encourage the CEO to develop a succession plan under the oversight of the board, and that the board should institute a development program for executives.

The Principles encourage the remuneration committee to oversee compensation for the CEO, other senior executives, and to link these policies to performance. In addition, the remuneration committee should evaluate the performance of the CEO annually on the basis of objective and agreed criteria.

In practice, the CEO may still be selected by the controlling shareholder

In practice, in many companies, the board selects the CEO, often with the recommendation of the nomination committee (if any). In others, including SOEs and many that are part of groups, this is done by the controlling shareholder. Only 40 percent of companies disclosed that they had a succession policy in place, and only 16 had a clear and comprehensive plan. Many boards do set the CEO's remuneration and make use of various kinds of performance based pay, including stock options. According to the CGR 75 percent of companies gave a clear presentation of remuneration policy but, only 28 percent of boards confirmed conducting an annual performance assessment of the CEO.

Boards also have limited rights to receive information from management in a timely matter before the meeting or access outside advice. This is not a major short coming in most cases—directors are generally well briefed—but does represent a deviation from good practice.

The Board and the Control Environment

Boards of listed companies are required to have audit committees composed exclusively of independent members. Companies are also required to have an internal audit function that reports directly to the audit committee. The audit committee should manage the relationship with the external auditor, ensure compliance with laws and regulations, and reviews financial reporting.

Audit committees are required to review internal controls

The Principles call for the board to ensure that risk management and internal controls are in place. The audit committees of listed companies are required to report on the adequacy of the company's internal controls. Under BoT regulation, banks are to have risk management functions that report to a risk management committee of the board.

In practice, the vast majority of companies have audit committees with independent members. According to the Thai IoD CGR, 99 percent of companies confirmed that the internal audit function had a reporting line to the audit committee and 85 percent noted that internal audit had been established as a separate unit in the company. 96 percent disclosed that the audit committee proposed the auditor and almost all had a statement from the audit committee on financial reporting and the company's internal controls. 91 percent of boards provide a risk management policy, but only 41 percent have a risk committee of the board, primarily financial companies.

Audit committees of listed companies are required to review and report on related party transactions (RPTs). As discussed above, RPTs have to be disclosed, and if large enough, approved by the board and shareholders. A conflicted director should disclose their interest and not participate or vote on a decision related to it. The Principles confirm that the board should develop policies on conflicts of interest to protect the interest of the company and all shareholders, and monitor compliance with these policies. 85 percent of audit committees report on RPTs and 80 percent of boards made a statement on their conflict of interest policy

Conflicted directors should recuse themselves

Audit committees are to review and report on the company's compliance with law and regulation and the Principles state that the rights of all stakeholders that are established by law or through mutual agreements are to be respected. The Principles also encourage companies to have a code of ethics and publish reports on corporate social responsibility. In practice, while most companies do consider the rights of stakeholders in decision-making, the degree to which they do this varies widely. According to the Thai IoD CGR, 92 percent of companies reported on the audit committee's oversight of compliance, and 86 percent confirmed a code of ethics that had been disseminated throughout the organization.

Listed companies are encouraged to have codes of ethics

The Principles also advise that there should be an effective way for stakeholders to communicate to the board any concerns about illegal or unethical practices, and the 2008 amendments to the SEA give legal protection to whistleblowers. 49 percent of companies confirm they have a whistleblower policy in place. Employees at these companies may use these procedures, often anonymously.

Of the different groups of stakeholders, employees are generally well protected under the law and have employee councils that are to be established in most listed companies. Creditor rights have improved over the years. The recent Insolvency and Creditor Rights ROSC for Thailand has more on creditor's rights.

Board Professionalism

Audit committees are widespread; other board committees are less common

The Principles encourage boards to institute committees with a clear scope of responsibilities that are publicly disclosed. In practice, board-level committees are widely established in Thai companies, and are usually made up of independent and non-executive members. These committees can allow independent board members to play a leading role in overseeing external and internal audit, director and executive nomination and compensation, and other key areas.

Beyond the audit committee, the use of particular committees varies by company. According to the CGR 55 percent said that their board appoints a remuneration committee, 54 percent appoint a nomination committee, and 41 percent appoint a risk committee. In addition, while almost all companies disclose the audit committee charter and other information, only about half disclose the charter or meeting attendance in other committees, and less than 40 percent confirm that the nomination or remuneration committees are majority independent.

The IoD has trained thousands of directors

The Principles encourage companies to offer professional trainings to their board members as well as with an introduction to the operations of the company. Many board members have training through the Thai IoD, which has trained about 5000 board members. However only 46 percent of companies confirmed that the board provides orientation to new directors.

The Principles state that board self-assessment should be conducted regularly to allow all board members to think about the board's performance and solve any problems they may have. They also state that board members should assess board performance as a whole or specifically to the issues, not toward any single director. Nothing is specified in the Principles or law on linking board assessments to director remuneration. In practice, 52 percent of survey respondents confirm their board did conduct a self-assessment.

FINDINGS OF THE DCA

The Detailed Country Assessment (DCA) of the OECD Principles of Corporate Governance is summarized in the tables at the end of the report. The assessment is based on a methodology developed with the OECD and looks at both legal requirements and actual practice. The assessment confirms that Thailand is a regional leader in corporate governance and has achieved high levels of compliance in a number of key areas, with a relatively comprehensive framework and high levels of compliance. However, it also finds some gaps: 3 principle are implemented at 50 (out of a 100 percent) or less, and 14 at 75 or less. Overall, of the assessed Principles, 6 are rated fully implemented (95+), 42 broadly (75+), 16 partially (35-75), and none are not implemented.

Recommendations

Thailand has continued to make substantial progress in improving corporate governance in listed companies and financial institutions. However protecting minority shareholders and retirement savings and maintaining investor confidence requires that reform continues.

Protect minority shareholders and maintain market confidence

Key reforms include:

- ▶ Improving SOE governance and making the state a more effective owner;
- ▶ Maintaining the credibility and effectiveness of the SEC and BoT;
- ▶ Updating and clarifying SET and SEC guidelines and regulations;
- ▶ Improving shareholder rights and redress, including for foreign shareholders and through the SEC;
- ▶ Enhancing beneficial ownership disclosure and other non-financial disclosure;
- ▶ Strengthening auditor independence and effectiveness of market intermediaries; and
- ▶ Continuing to increase board independence and effectiveness.

Improve SOE governance and make the state a more effective owner

Given the substantial role that both listed and non-listed SOEs continue to play in the economy, and the importance of the state and state linked entities as owners of minority stakes in companies, SOE governance and how the state acts as a shareholder should remain key focuses of reform.

Supporting this reform may require additional analysis, for example a review against the OECD Guidelines on the Corporate Governance of State Owned Enterprises and other international good practice.

To improve SOE governance and performance:

- ▶ Bring board skill sets closer to those of other listed companies and limit the number of civil servants on SOE boards to, at the most, 2-3 directors, in line with good practice in many OECD countries and a growing number of emerging market economies;
- ▶ The SOE board should be chosen in a transparent fashion, at least half should come from the SEPO director's pool and or meet other clear selection criteria;
- ▶ Bring highly qualified audit firms to audit the financial statements of listed SOEs and supplement the work of the OAG;
- ▶ Reconsider the role of line ministries that act as both SOE owners and policy makers for both the private and state sector;

Move SOE boards closer to private sector boards

- ▶ Provide greater guidance on how the state makes other key decisions as an owner, like approving major transactions and ensuring that the board can carry out many decisions without needing shareholder approval;
- ▶ Similarly, streamline the process for approving capital plans and investments; and
- ▶ Ensure that SOE level governance matches those of private sector listed companies, including with respect to RPTs.

An additional review against the OECD Guidelines could also provide a more detailed action plan to develop and provide additional guidance on how to implement the above steps.

Disclose policies on conflicts of interest and voting

SEPO, the Social Security Office, and the Government Pension Fund should develop and disclose policies on conflicts of interest and voting, and disclose how they vote. They should consistently consider governance in their investments, using, for example, the data provided by the Thai IoD and their own analysis.

Increase SEC and BoT independence

Maintain the credibility and effectiveness of the SEC, BoT, and SET

To maintain the SEC's strong reputation, there should be consideration of ways of further reducing the role of the Ministry of Finance (MoF) and enhancing SEC independence, in line with good practice in other countries and International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation. This would probably require changes to the SEA that would, for example, require the SEC report directly to parliament and parliamentary approval of the SEC members, who could only be removed with cause. Similarly, the BoT should also gain more independence from the government consistent with the Basel Core Principle for Effective Banking Supervision (BCP).

Vigilance must be maintained regarding possible conflict of interest involving members or employees of the SEC, including their family members, or personnel financial interest. The SEC should also continue its active enforcement of laws and regulations, including the pursuit of case involving prominent individuals.

Allow for civil actions

In terms of effectiveness, as noted, civil actions and suits for shareholders should be added to the SECs enforcement tools. The SEC should seek to better coordinate its enforcement efforts in investment banks and financial conglomerates with the BoT. It should make use of joint inspections and seek to reduce redundant requests. It should also seek to ensure effective cooperation with the DBD and related bodies, including the police and Department of Special Investigation (DSI), especially in pursuing serious corporate governance abuses. This may require explicit powers to participate in criminal investigations or in criminal prosecutions.

Move SET governance to that of listed company best practice

Short of full demutualization, the SET should ensure that it complies with the best practices for listed companies. It should consider a more objective board nomination process that brings in highly qualified board members, consistent with the SETs rules and practice among leading listed companies.

Update and clarify SET and SEC guidelines and regulations

The SEC and SET should seek to clarify regulatory requirements and best practice guidance by consolidating requirements, removing redundant or outdated notifications, and ensuring that current ones are available online. This may include amending the Principles to incorporate more good practice. When this process is advanced, the SEC and SET should seek to produce a guide for directors and other market participants that present both current regulatory requirements and good practice in a user friendly format.

Remove redundancies and develop a user friendly guide

In the longer term, the PLCA should be reviewed to be in line with the SEA in company law areas, for example the language on director's duties.

Improve shareholder rights and redress, including for foreign shareholders and through the SEC

While shareholder rights are generally well established, critical gaps remain, and most avenues of shareholder redress are difficult to use in practice. Through regulation under the SEA or legal changes as needed, shareholder rights should be strengthened.

Move to 21+ day meeting announcements

The meeting notice for listed companies should be 21 days, or longer, for all shareholder meetings. Requirements for providing information on board members and other matters before the meeting should be more strongly encouraged (these are now in a voluntary AGM checklist issued by the SEC).

Thresholds to amend the meeting agenda should be lower, for example 20 or more shareholders with 2 percent of shares. Similarly, it should be easier to call for a GMS or an inspection from the DBD, for example 30 or more shareholders with 5 percent of shares.

The duty of custodians to provide information to clients and act on their instructions should be strengthened. Where possible, restrictions on foreign ownership should be lifted, and Thai NVDR should be seen as a last resort, not a default means of investment.

Improve voting rights for foreign investors

Shareholder suits against directors, and those that act as directors should be reviewed and barriers to effective use reduced. They should be allowed both when actions are taken that hurt the company and when bias is clearly shown against a group of (non-controlling) shareholders. The SEC should be given explicit powers to take civil actions on behalf of investors.

Consideration should be given to expanding withdrawal rights for shareholders, for example to more situations where they dissent against a decision requiring supermajority approval. Shareholders should also be able to sell back their shares with a major shareholder has more than 90 percent of shares.

Enhance beneficial ownership disclosure and other disclosure

To improve company disclosure, convergence to IFRS should be finalized. In addition, steps should be taken to improve disclosure of non-financial information. This includes disclosure of ownership rights provided through shareholder agreements and other mechanisms, as well as indirect ownership to the public, that is through family members, company ownership, nominees and custodians.

Improve disclosure of shareholder agreements and indirect ownership

This may be a question of better enforcing or revisiting existing SEC requirements in this area. For example, clarification should be provided on disclosure of ownership structure to include both subsidiaries and other companies in a group linked by ownership. Crucially, if disclosure is required to be made directly to the SEC by a shareholder, then this should be incorporated into the annual report.

Other non-financial disclosure that could be improved include that of the CEO and possibly other highly paid executives. This should be at the individual level and should include a description of remuneration policy, links to performance, and all forms of compensation, for example pensions or housing or travel benefits. Disclosure of criteria for board independence, and business operations and future trends, should also be improved. In addition, while RPT disclosure has improved over the years, much of what is in the annual report is still cursory in nature and lacks key information. All these areas that could benefit from more detailed best practice guidance.

Strengthen auditor independence and effectiveness of market intermediaries

Have more explicit limits on non-audit services for audit clients

Regulation should move to clearer language calling for the independence of the external auditor and should place explicit restrictions on tax and consulting services provided to audit clients. International best practice calls for these functions to not be provided to audit clients. As an alternative or transitory provision, limits could be placed the amount of fees that can be earned for non-audit services provided to audit clients.

The SEC needs to be provided adequate resources to review a larger fraction of the several hundred audit engagements that take place each year. FAPs role should continue to be scrutinized.

Strengthen rules for brokers and other intermediaries

Brokers, credit rating agencies, and other reputational agents should have stronger requirements in terms of managing and disclosing conflicts of interest. These should be in line with international good practice.

Continue to increase board independence and effectiveness

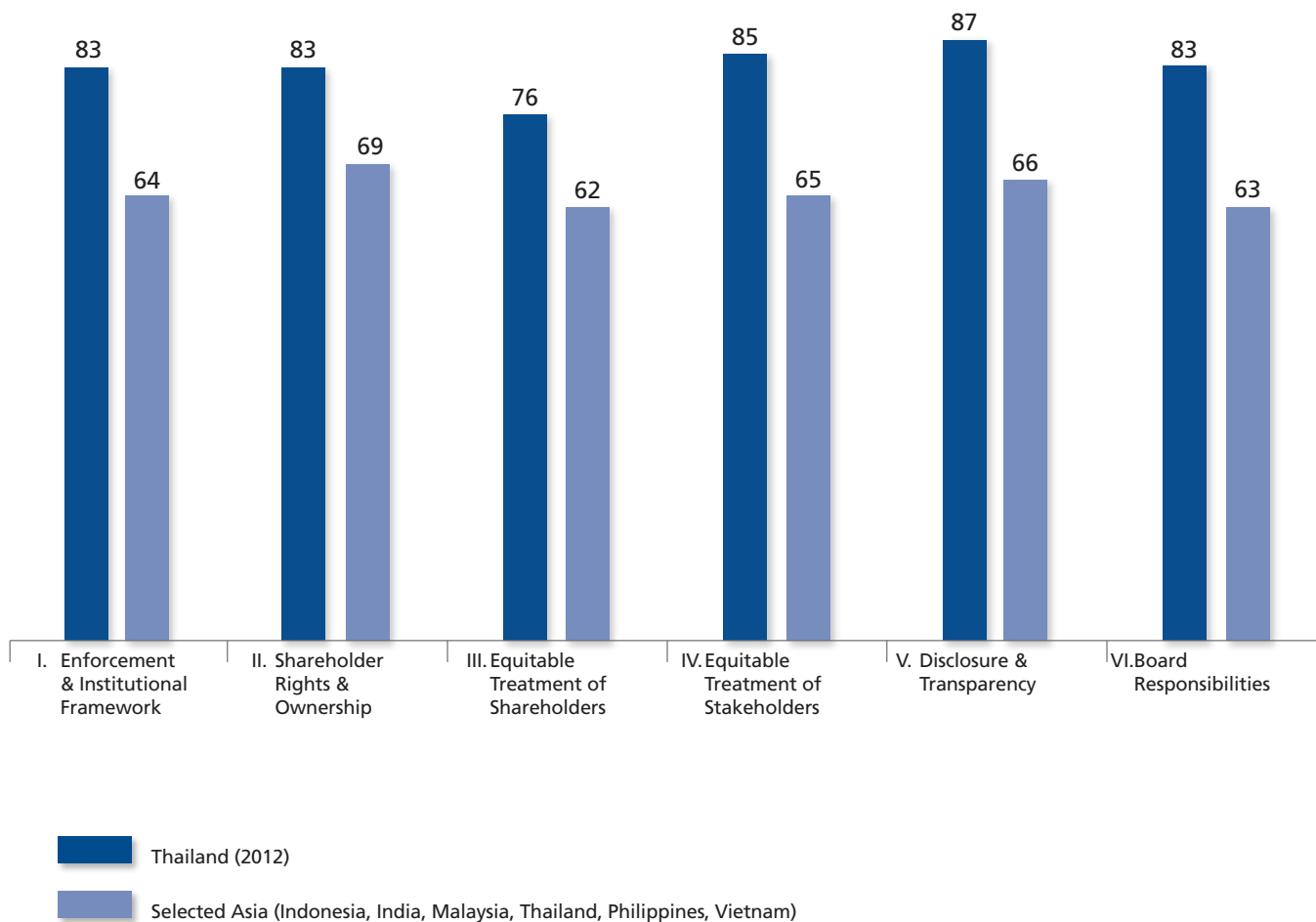
Boards in Thai listed companies currently comply with a number of good practices, however there are still key steps that could be taken to cement their independence and further increase effectiveness, especially with respect to management oversight:

Move to independent chairs

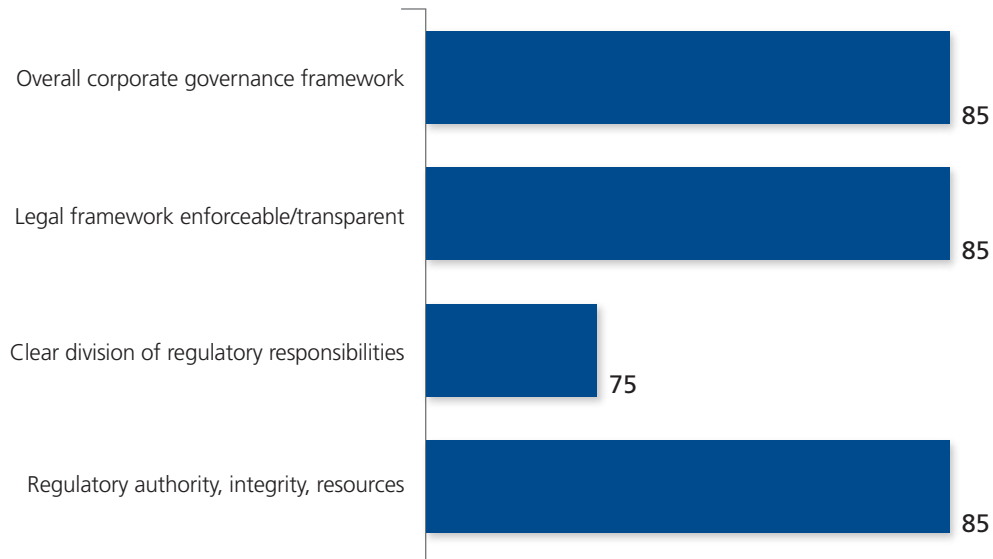
- ▶ Stronger language should be considered on the chairmen, with encouragement for independence and that the role is not a full time one;
- ▶ Encouragement of greater board independence, including limiting tenure to, say, 9 or 12 years and moving to one half independent board members;
- ▶ Stronger requirements for nomination committees to consider small shareholder suggestions;
- ▶ Stronger requirements to assess the performance of management;
- ▶ Boards should have the responsibility to choose and remove the CEO; and
- ▶ Boards should have access to information from the management in a timely basis and access to professional advice.

Summary of the Detailed Country Assessment: Thailand

Thailand Country Assessment vs. Regional Averages

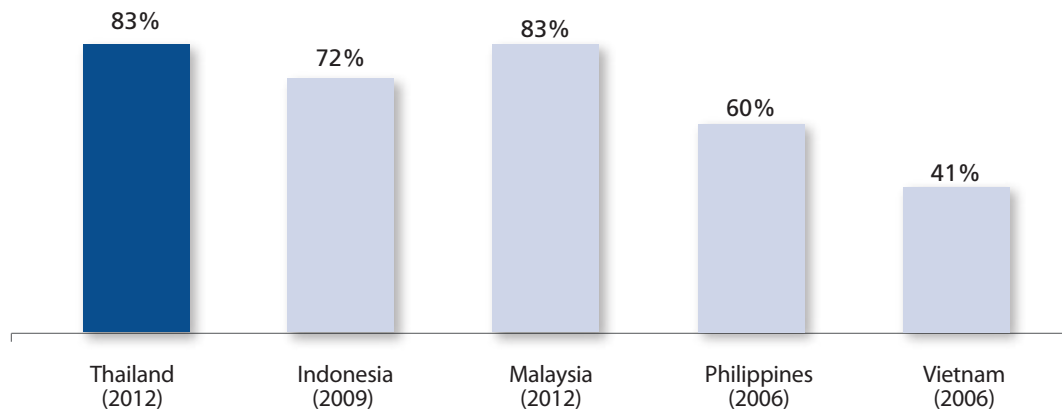


OECD Principle Assessment: Corporate Governance Framework | THAILAND



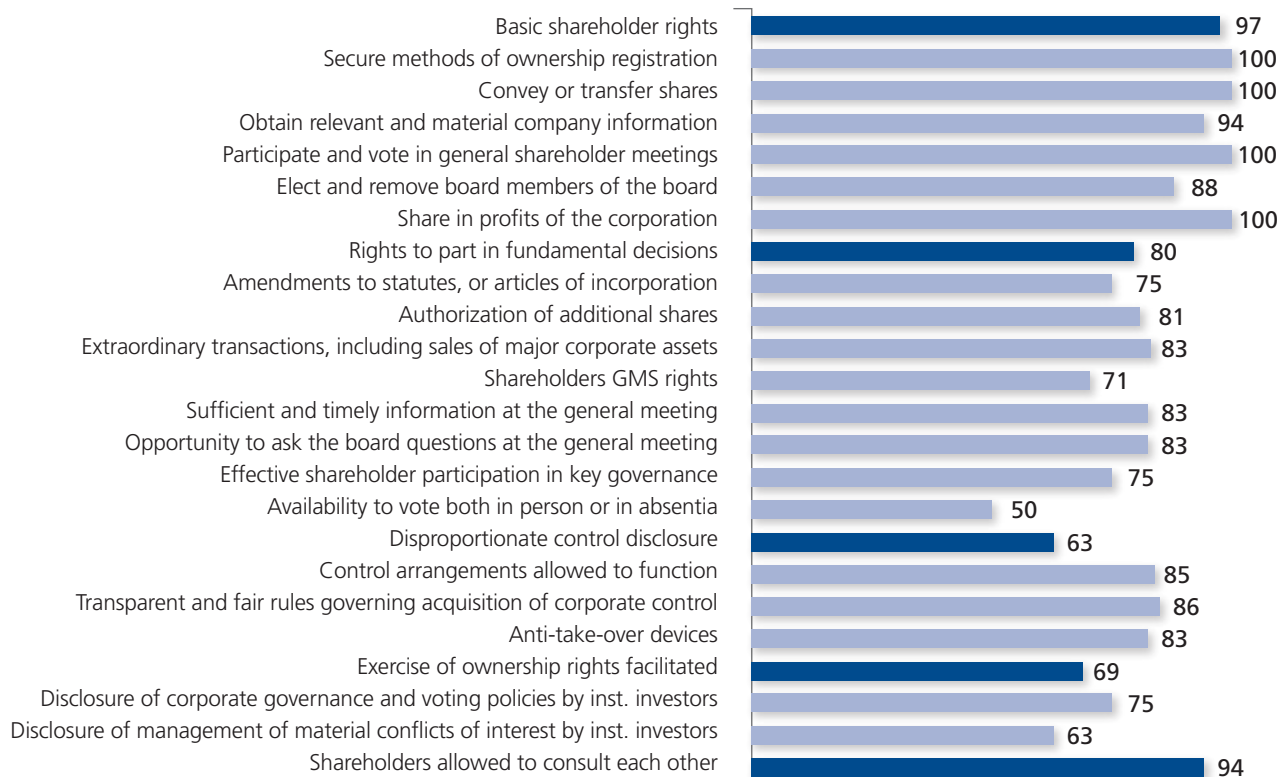
SOURCE: Detailed Country Assessment. Figures represent the percent implementation of each OECD Principle. 95% = Fully implemented, 75-95% = Broadly Implemented, 35-75% = Partially implemented, and less than 35% = not implemented.

International Comparisons



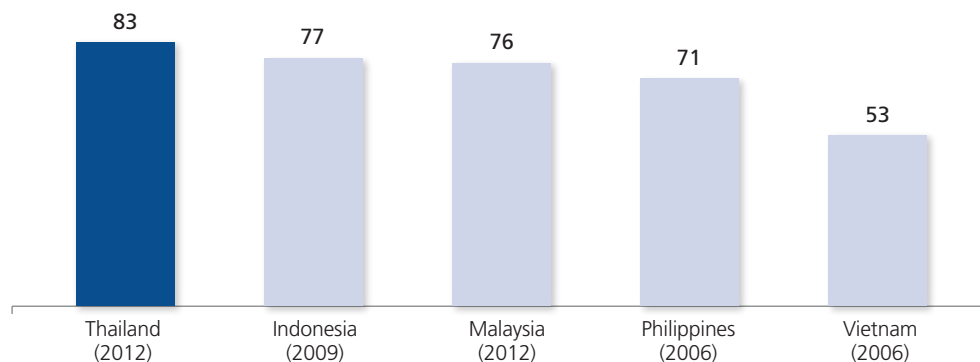
SOURCE: Figures for other countries represent weight-averaging of scores from previous ROSCs. Averages should be interpreted with caution due to changing methodologies over time. Data from previous ROSCs are not directly comparable because reports were completed in prior years (year of ROSC publication in parenthesis). NOTE: Data is missing for several countries because this section of the OECD Principles did not exist in 2003 and was not assessed.

OECD Principle Assessment: Shareholder Rights | THAILAND



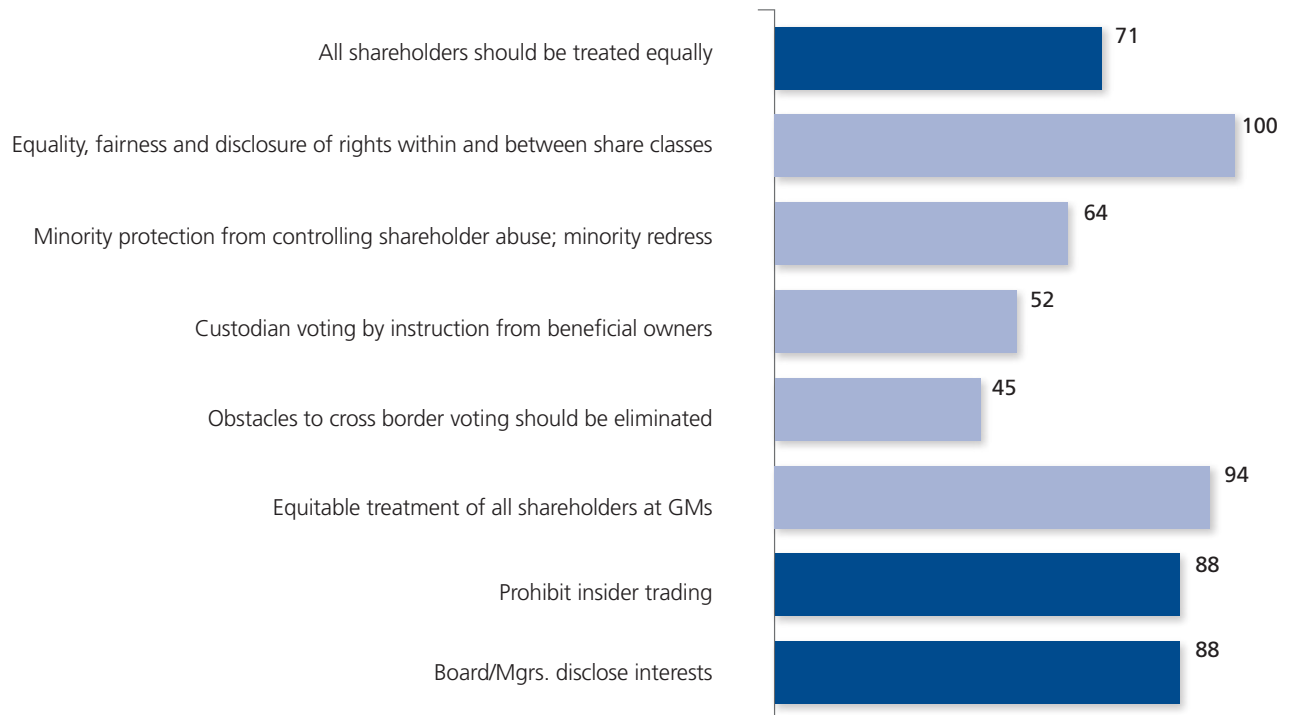
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International Comparisons



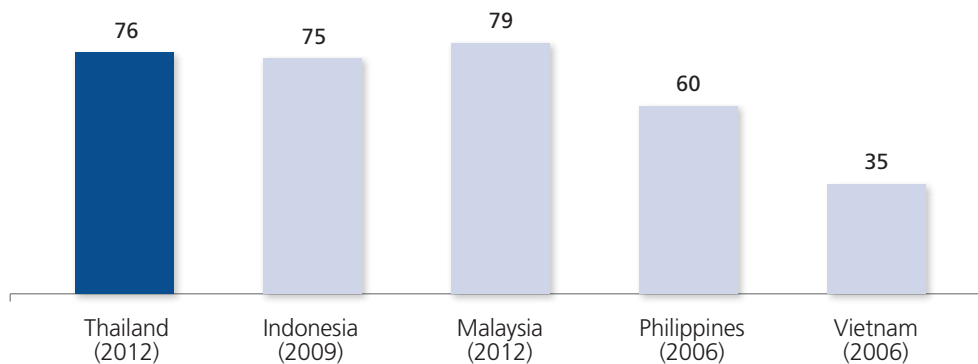
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OECD Principle Assessment: Equitable Treatment of Shareholders | THAILAND



SOURCE: Detailed Country Assessment. Figures represent the percent implementation of each OECD Principle. 95% = Fully implemented, 75-95% = Broadly Implemented, 35-75% = Partially implemented, and less than 35% = not implemented.

International Comparisons



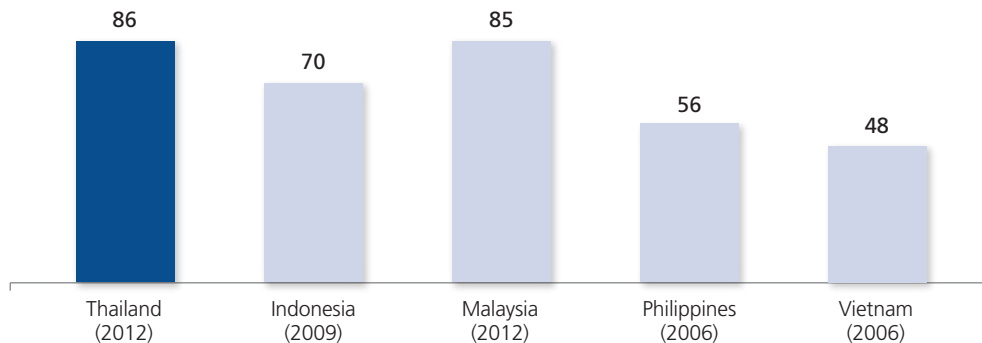
SOURCE: Figures for other countries represent weight-averaging of scores from previous ROSCs. Averages should be interpreted with caution due to changing methodologies over time. Data from previous ROSCs are not directly comparable because reports were completed in prior years (year of ROSC publication in parenthesis). NOTE: Data is missing for several countries because this section of the OECD Principles did not exist in 2003 and was not assessed.

OECD Principle Assessment: Equitable Treatment of Stakeholders | THAILAND



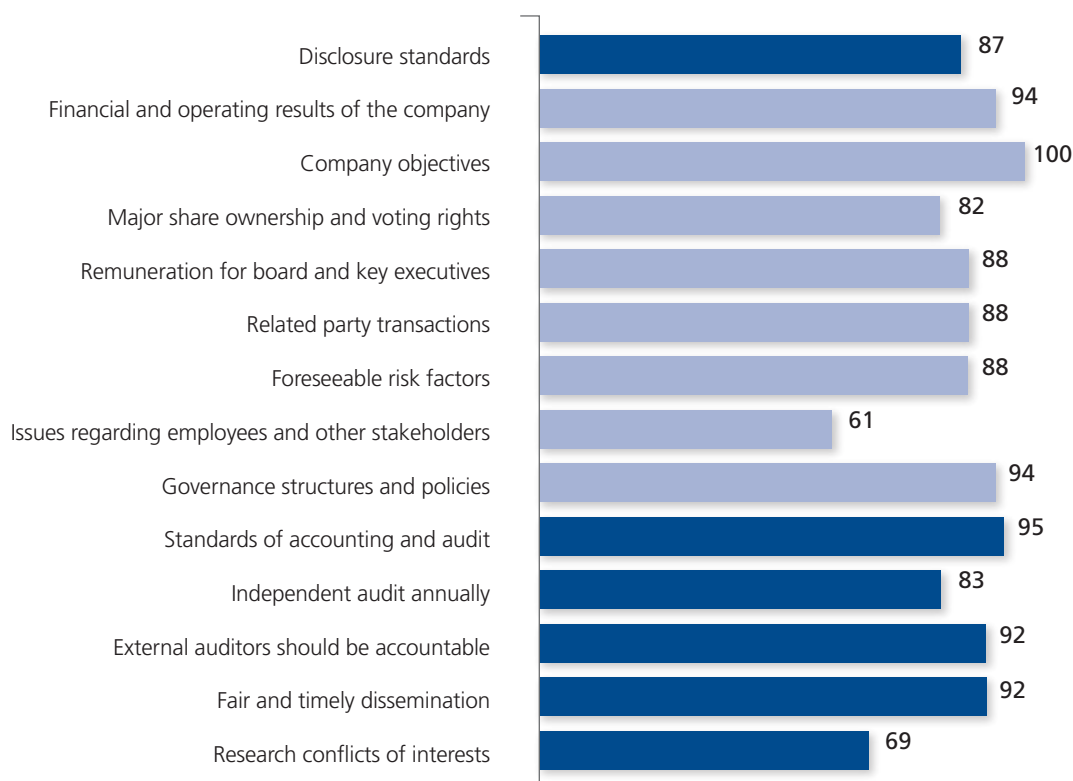
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International Comparisons



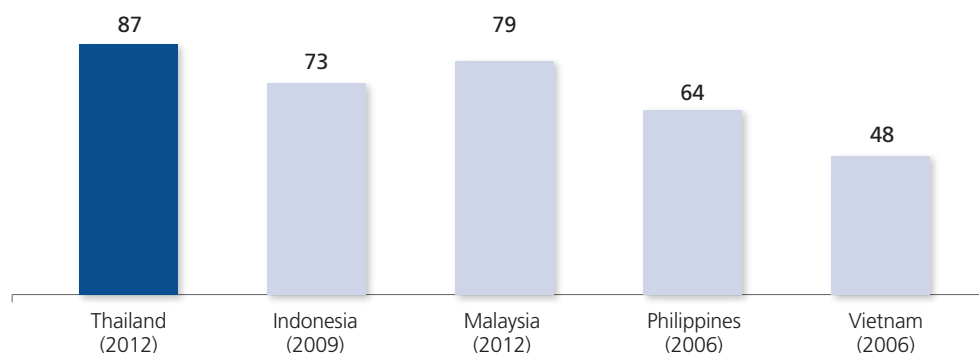
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OECD Principle Assessment: Disclosure and Transparency | THAILAND



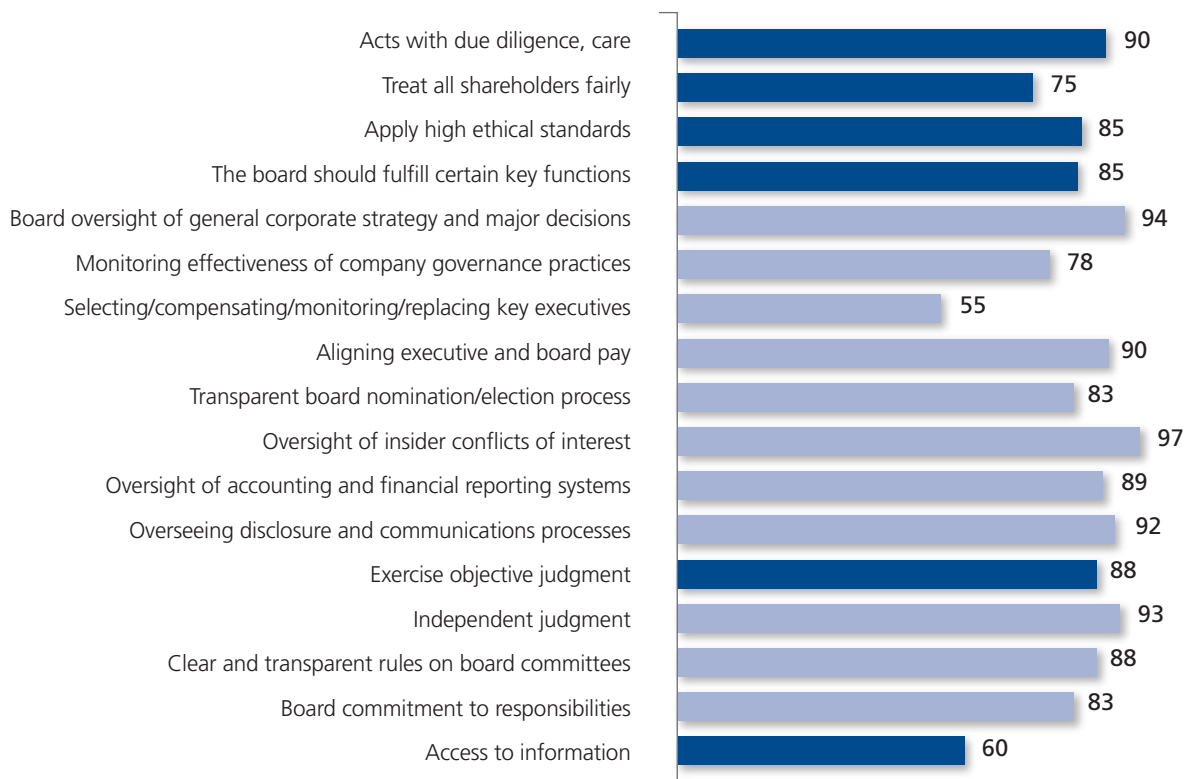
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International Comparisons



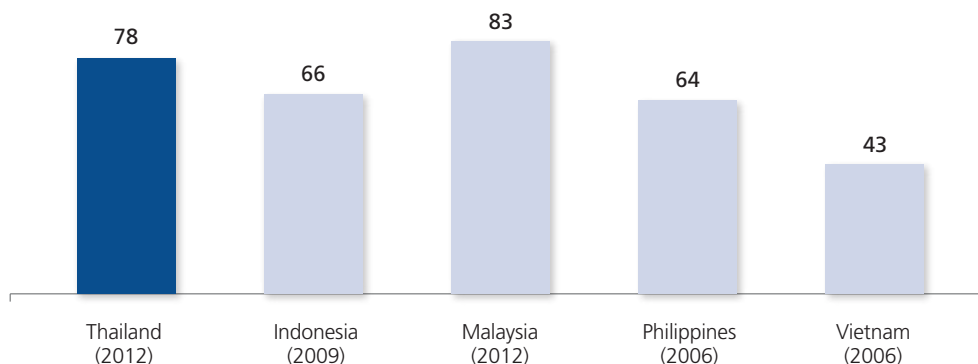
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OECD Principle Assessment: Responsibilities of the Board | THAILAND



SOURCE: Detailed Country Assessment. Figures represent the percent implementation of each OECD Principle. 95% = Fully implemented, 75-95% = Broadly Implemented, 35-75% = Partially implemented, and less than 35% = not implemented.

International Comparisons



SOURCE: Figures for other countries represent weight-averaging of scores from previous ROSCs. Averages should be interpreted with caution due to changing methodologies over time. Data from previous ROSCs are not directly comparable because reports were completed in prior years (year of ROSC publication in parenthesis). NOTE: Data is missing for several countries because this section of the OECD Principles did not exist in 2003 and was not assessed.

Annex

Corporate Governance of State Owned Financial Institutions

In 2011 the World Bank conducted a modular FSAP for Thailand that reviewed the corporate governance of 8 specialized financial institutions (SFI), including how the state exercises its ownership rights, in light of comparable countries and the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The 8 SFIs have about 80 billion USD in assets, which is equal to approximately 30 percent of SOE assets and 25 percent of the assets of the Thai commercial banks, and their share of the financial sector has been growing, especially in recent years. The Fiscal Policy Office (FPO) in the MoF acts as the “supervising ministry” in the SFIs.

TABLE 8: Banks with Majority State Ownership

Bank	Employees	Asset (mTHB)	Asset (mUSD)	Revenue (mTHB)	Revenue (mUSD)
Krung Thai Bank PCL. (KTB)	16,870	1543,830	47,502.4	71,768	2,208.2
<i>8 SFIs:</i>					
Government Savings Bank (GSB)	10,433	1080,226	33,237.7	42,685	1,313.3
Government Housing Bank (GHB)	2,612	691,349	21,272.2	34,931	1,074.8
Bank of Agriculture and Agricultural Coop. (BAAC)	3,915	745,839	22,948.8	32,653	1,004.7
Export-Import Bank Of Thailand (EXIM)	646	65,742	2,022.8	3,482	107.1
Small & Medium Enterprise Develop. Bank (SME)	1,582	63,559	1,955.6	2,559	78.7
Islamic Bank of Thailand (IBank)	744	45,292	1,393.6	1,485	45.6
Small Business Credit Guarantee Corp. (SBCG)	103	9,204	283.2	712	21.9
Secondary Mortgage Corpor (SMC)	62	2,782	85.6	125	3.8
8 SFI total	20,097	2,703,993	83,199.7	118,632	3,650.2
8 SFI with KTB total	36,967	4,247,823	130,702.2	190,400	5,858.4
SOE Total	256,475	7,843,635.	241,342.6	3,151,202.9	96,960.0

Source: Bank of Thailand, 2009 data.

Even as the SFIs compete with the commercial banks, they are also seen as vehicles for public policy, and have a distinct corporate governance framework. Each SFI was formed and is governed by a unique legislative act or official decree and many rules and procedures applicable to commercial banks or other financial institutions do not apply in full or at all to the SFIs. They are also not subject to laws or regulations on companies, securities, insolvency, or competition. At the request of FPO, SFIs are reviewed by BoT, but not regulated in the same way other banks are, and are not subject to sanctions from the BoT.

The SFIs implement government policies, helping to support rural incomes, small business, housing, and other policy areas. At the same time, the SFIs are independent commercial entities, and finance their activities primarily through their own revenue. A number of the SFIs have been expanding their more conventional banking activity.

The SFIs do comply with the corporate governance requirements that SEPO has introduced for all SOEs. All SFIs have performance agreements (PA) with key performance indicators (KPI) that are independently monitored. They prepare annual reports and quarterly State Enterprise Reviews (SERs) that include substantial financial and non-financial information and are readily available to the public. Each SFI has an internal audit functions that reports to an audit committee of the board. SFI boards are composed primarily of non-executives and chaired by non-executives and many SFI directors have benefited from director training. They make regular use of good practices including board evaluations and committees. Some SFIs also use performance based pay for board members, based in part on KPI.

However there is little guidance on how key decisions should be made and how policy objectives should be financed. FPO acts as a policy maker and regulator in the SFIs, as well as the supervising ministry and how SEPO, FPO, and the SFI boards should exercise their various powers is not always clear. In contrast to non-financial SOEs, there is no standard policy or procedure to budget for or disclose the costs of SFI operations under government policies. In practice, these are handled in an ad-hoc way, and are generally not transparent. Policy considerations are embedded in KPI, but these generally encourage lending volume and, in most SFIs, place less emphasis on financial performance. Like other SOEs, SFIs are audited by the Office of Auditor General (OAG), the supreme public sector auditor, and not by qualified private sector audit firms.

Like other SOEs, SFI boards have few members from the private sector. SFI boards tend to be large and are composed primarily by civil servants and those with other connections to the government; most only have 1-2 members with private sector experience. These civil servants frequently rotate, and board tenure can be short. SFI directors are not subject to the fit and proper test or fiduciary duties that commercial bank directors are. They have liability as civil servants or SOE employees, which, combined with other civil service norms generally found in the SFIs, encourage risk aversion more than performance.

SFIs need extensive reforms, but other state owned financial institutions may point the way forward. The corporate governance of SFIs lags that of the listed companies and commercial banks in Thailand, including those with state ownership. The equivalents of the SFIs in comparable countries have also undertaken successful reforms. In the SFIs, key reforms—including bringing

the SFIs under BoT regulation and the same laws as commercial banks, improving board composition, and selling shares and listing on the SET—may require changing or replacing SFI founding acts.

Reforms should seek to better account for the SFIs' commercial and non-commercial objectives, clarify high level decision making, and bring SFI regulation, audits, boards, and disclosures in line with other banks. Major SFI commercial assets should be moved into the commercial banking system, and SFI policy obligations should become more transparent, including in their financing. At the same time, certain functions carried by the SFIs would be better addressed by the government and entities that are not commercial in nature. The relative roles of FPO, the board, and other parties in major decisions should be spelled out in SEPO guidelines. BoT should supervise the SFIs, and SFI board composition and disclosure must be brought in line with those of other banks. SFI financial statements should also be audited by qualified external auditors, while the OAG can continue to conduct other kinds of audits and investigations.



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This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
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Contact us at CG-ROSC@worldbank.org