

Thailand

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Thailand

Anyone who lived through the Asian financial crisis of 1997 has witnessed the rising trend of good corporate governance. This is both understandable and indispensable. Weak corporate governance had exacerbated the economic turmoil of the past decade. To prevent history from repeating itself, Securities and Exchange Commission, Thailand (SEC) set out on a mission to improve corporate governance practices in the capital market and regain confidence of local and international investors.

A decade later, thanks to the collective efforts of all parties concerned, Thailand has covered a lot of mileage in its drive towards international standard corporate governance. For starters, the SEC corporate governance working group set up in 1998 proposed a strategic outline for corporate governance practices of listed firms covering five key areas in need of improvement. They are:

- **Regulatory Reform** with special emphasis on protection of investors' rights;
- **Checks and Balances** across the company board for the best interest of stakeholders;
- **Information Disclosure** with more transparency, accuracy and sufficiency;
- **Market Mechanism** such as shareholder activities, corporate governance rating and educational programs for both company directors and investors; and
- **Effective Enforcement.**

The government announced 2002 the Year of Good Corporate Governance and the Cabinet appointed the National Corporate Governance Committee (NCGC) chaired by the Prime Minister, which consisted of representatives from government and the private sector. The committee's role is to lead the effort to strengthen investor confidence in listed firms and market intermediaries, synchronize corporate governance development plans and monitor performance of relevant agencies.

In 2005, Thailand underwent a corporate governance assessment by the World Bank under the Corporate Governance Report on the Observance of Standards and Codes (CG-ROSC). The CG-ROSC indicates that Thailand's observance of international practices of corporate governance is 69% largely observed and 31% partially observed. Since then the SEC has taken steps to address those areas of weakness identified by the assessment. These include a convergence of Thai accounting standards with the International Financial Reporting Standards (IFRS) and enactment of laws to provide more protection for minority shareholders.

1.1 Listed Companies and Market Capitalization

There are two markets on which companies are listed. The main one is the Stock Exchange of Thailand (the SET), and the other is the market for small and medium size enterprises called the Market for Alternative Investment (the MAI). In March 2010, there were 475 companies

listed on the SET, compared with 468 companies in 2005. As for MAI, there were 60 companies in March 2010, compared with 36 companies in 2005. There is no foreign listing on either market. Market capitalization of the SET was US\$195.9 billion in March 2010, up from US\$124.4 billion in 2005, while market capitalization of the MAI was US\$1.2 billion in March 2010, up from US\$300 million in 2005.

No. of Listed Companies and Market Capitalization of SET and MAI

Year	SET		MAI	
	No. of Listed Companies	Market Capitalization (USD mil)	No. of Listed Companies	Market Capitalization (USD mil)
2000	381	29,489	-	-
2001	382	36,356	3	10
2002	389	46,074	9	88
2003	408	120,895	13	346
2004	440	116,184	24	301
2005	468	124,424	36	349
2006	476	143,264	42	615
2007	475	222,911	48	1,285
2008	476	102,712	49	638
2009	475	175,999	60	1,173
Mar.2010	475	195,878	60	1,183

Source: Stock Exchange of Thailand, and Bloomberg
The Next Steps

1.2 Three Pillars of Success

Key success factors for corporate governance development in the capital market are:

1. Regulatory Discipline

Many steps have been taken to improve the regulatory framework of the Thai capital market which is based on the Securities and Exchange Act (SEA), the Public Limited Companies Act (PCA) and regulations under the SEC and the Stock Exchange of Thailand (SET). In 2008, the amendments to the SEA came into force, providing clearer scope of fiduciary duties, stipulating sanctions for breaches of those duties, and strengthening the rules governing related party transactions including stronger protection for investors' interests. The Ministry of Commerce's proposed amendment to the PCA is being reviewed by the Council of State while the draft Bill amending the PCA would put in place additional mechanisms to protect investors' rights.

The SEC also proposed a class action bill which would enable shareholders and investors to pursue lawsuits against directors for breaches of duties more conveniently and cost-effectively. The draft bill is being reviewed by the Council of State.

In addition, to enhance corporate governance of listed companies, the SEC and the SET issued several regulations. For example,

- All listed companies are required to have independent directors composing of at least one-third of board size and audit committee composing of at least three members, including all independent directors. Duties of the committee are to review the reliability of financial statements, comment on whether transactions are fair and in the best interest of the company, review the sufficiency of internal control systems, etc.

- Substantial related-party transactions must be approved by shareholders and disclosed in the annual report.
- All listed companies must submit quarterly financial statements and the annual statement has to be audited by accredited auditors while the quarterly statements have to be reviewed.
- To put the IFRS convergence in place, the Federation of Accounting Professions (FAP) has revised the Thai accounting standards so that they comply with IFRS.
- To encourage companies to follow CG guidelines, listed companies are required to disclose in their annual reports whether they comply with the Principles of Good Corporate Governance for Listed Companies. Any non-compliance has to be thoroughly explained (comply or explain).

2. Market Discipline

Investor activism is another main factor in encouraging listed companies to comply with good corporate governance practices. The measures that have been undertaken are as follows:

- As institutional investors (i.e. mutual funds, private funds, and provident funds) are a catalyst for fortifying good corporate governance practices among listed companies, the SEC issued rules requiring asset management companies to exercise their voting rights on all agendas that may affect shareholders or share value at the shareholder meetings of listed companies. Consequently, asset management companies must disclose guidelines of their proxy voting for investors' review. In addition, the voting record must also be disclosed in their websites annually.
- On the retail investor side, the Thai Investors Association (TIA) is the representative of investors, with one board lot shares in every listed company to gain access to shareholders meetings. If TIA sees inappropriate proposals, it may solicit proxy from investors to counter vote the major shareholders. In addition, since 2006, the SEC, in cooperation with the TIA and the Thai Listed Companies Association (TLCA), has conducted an assessment of the Annual General Meeting (AGM) to increase awareness of listed companies about the importance of AGM and to encourage shareholders' active participation. The SEC also provided an AGM checklist as a best practice guideline for listed companies. Over the last four years, most listed firms have made continuous progress as seen from the number of companies achieving good or higher score increasing from 52% in 2006 to 81% in 2009.
- Since 2001, the Thai Institution of Directors' Association (IOD) has conducted corporate governance surveys of Thai listed companies, which are based on the Principles of Corporate Governance of the OECD. The objective of this survey is to review the governance practices of Thai firms. The overall survey results were published in a report entitled "Corporate Governance Report of Thai Listed Companies (CGR)" and publicized to all listed companies and concerned parties in the capital market. The reports have helped Thai listed companies to significantly improve their corporate governance practices, as can be seen from the overall average score, which increased from 50% in 2001 to 75% in 2008. In 2009, the IOD conducted a survey of 290 listed companies and the results showed an average score of 82%.
- Since 2008, the SEC has taken the further step of requesting every securities company to include corporate governance performance assessment according to this CGR in their securities analysis reports. In 2009, all Thai securities companies have already disclosed result of the CGR in their research papers. This has made the report more valuable and widely used by the parties concerned. At the international level, several institutes of directors in the region adopted the Thai IOD criteria in conducting surveys. In the future, the CGR will be developed to be a CG rating, which will enable investors to differentiate the good governance companies from the rest and can then attach higher value to those firms.

To increase awareness of good corporate governance via the media, the SEC and the SET regularly use several communication channels such as websites; publications; articles in newspaper; magazines; television programs; and exhibition to disseminate news and information about the Thai capital market including the elements and benefits of good corporate governance. In addition, specific issues the SEC and the SET will use channels such as the SET's column in the PostToday newspaper named "Enhancing Business with Corporate Governance", the SEC's column in Manager newspaper named "Think Out Loud with the SEC", the SEC's TV program on Money Channel named "Inside SEC". In the past several years, the financial newspapers have paid attention in corporate governance by regularly report on corporate governance issues such as transactions concerning acquisitions or disposal of major assets, the related-party transactions, results of shareholders' meetings and corporate governance enforcement.

3. Self Discipline

Self discipline is another important driver of good corporate governance. The SEC, the SET and other institutions have provided guiding principles and codes of best practice for listed companies to enhance their corporate governance practices.

The Principles of Good Corporate Governance is one such guiding principle. In 2006, the SET launched the Principles of Good Corporate Governance, which was an updated version of the previous 15 Principles of Corporate Governance announced in May 2002. More principles have been added so that it is comparable to the Principles of Corporate Governance of the OECD. The 2006 version included recommendations made by the World Bank in its CG-ROSC. All listed companies must disclose their implementation regarding the principles in their annual registration statement and annual report.

The SEC, the SET and other professional institutions have provided many guidelines and codes of best practice for good corporate governance. For example: Director's Handbook; Financial Advisor Due Diligence; Nomination Committee Guidelines; Remuneration Committee Guidelines; Corporate Governance Self Assessment; Best Practice of Shareholders; Code of Best Practice for Directors of Listed Companies; Audit Committee Checklist, Director Compensation Best Practices, Director Nomination Best Practices; Internal Control Checklist; Q&A: Risk Management, etc.

In addition, educational programs and seminars for market participants are essential mechanisms to create awareness and understanding in the capital market. To date, many series of training programs have been introduced by related organizations:

- In 1999, Thai IOD was set up to provide several training programs for developing professional standard of directorship and provided best practice guidelines for company director to perform their duties effectively and to international standards. Over the last decade, Thai IOD has offers various training programs for directors, audit committees, chairmen and other key persons in listed companies, for instance, Director Certification Program, Audit Committee Certification Program, Financial Statement for Directors, and Company Secretary Program. To date, more than 3,500 directors of listed companies have attended one or more IOD classes.
- In 2002, the SET established the Corporate Governance Center (CG Center) to help listed companies achieve good corporate governance. CG Center provides free consulting services and exchanges ideas about corporate governance practices with directors and executives of listed companies.
- The SET also established the Thailand Securities Institute (TSI) to provide an educational program for investors. It offers training and seminars to enhance the levels of financial and

investment literacy of the investors and other market participants. Additionally, TSI has established a “Train the Trainer” project, designated for professors in Economics, Finance, and Investment fields in academic institutions and experts in financial and capital markets, who are key conduits of knowledge for the general public.

- Recognizing that the legal issues in disputes under the SEA are complex and require specialized knowledge of capital markets and the law, training is mandatory for new judges. In this regard, the SEC provides annual training to existing judges and to the Office of the Attorney General (OAG).
- In recent years, several Thai universities have introduced courses concerning corporate governance. Some universities even provide education programs dedicated to corporate governance courses such as Doctor of Philosophy Program in Good Governance Development, Chandrakasem Rajabhat University; and Master of Science Program in Corporate Governance, Chulalongkorn University.

2. Corporate Governance Development in Financial Institutions

Commercial banks: realizing the possibility of adverse effects that financial institutions may have on the economy and general public, the Bank of Thailand (BOT) has continued to enhance high standards of corporate governance to the financial institutions. The followings are examples of the BOT measure to promote good corporate governance:

The Financial Institutions Business Act of 2008, provides the BOT authority to define the appropriate structure of the board of directors and sub-committees of the financial institutions to establish checks and balances. Further, the appointment of directors and top executives and management of financial institutions must receive approval from the BOT. According to the BOT regulations, to gain approval the executives and management must hold fit and proper qualifications in three aspects including (1) honesty, integrity, and reputation (2) competence, capability, and experience; and (3) financial soundness.

Additionally, the board of directors of financial institutions must have main duties in four major areas including risk management, monitoring the capital adequacy, rules and regulations compliance and overseeing the good corporate governance.

Insurance companies: the Office of Insurance Commission (OIC), regulator of all insurance companies, promotes corporate governance in the insurance sector. Several notifications, guidelines, and best practices have been issued:

- Regulations on rules and procedures to formulate policy on internal control systems and investments of the insurance companies;
- Regulations on criteria on approving external auditors of insurance companies;
- Regulations on the scope of external audit on assessing internal control and investments of insurance companies;
- Insurance companies’ director handbook; and
- Internal Audit Guidelines

3. Corporate Governance of State-Owned Enterprises

The State Enterprise Policy Office (SEPO) plays an important role in regulating and supporting state enterprises in order to ensure their good corporate governance and competitiveness, and in enabling them to become tools for Thailand's sustainable development. Currently, there are 58 state enterprises in nine sectors with the total assets of B6 trillion and the ability to generate total revenue of B2.7 trillion a year. However, in today's competitive market, SOEs can no longer rely on traditional ways of management. They must be able to effectively cope with dynamic environments, economic globalization and technological development. The SEPO has initiated guidelines and strategies to create incentives for continuous improvement:

- Reformation and recovery plan for under-performed state enterprises
- State Enterprise Performance Appraisal system (SEPA)
- Remuneration system
- State Enterprise Awards (SOE Awards)
- State Enterprise Review (SER)

In addition, the SEPO has developed "guidelines on good governance for state enterprises", which were granted the cabinet approval on 16 February 2001. These guidelines introduce mechanisms for creating transparency and effectiveness in the administrative system of state enterprises using six standards:

1. Accountability: responsibility for outcomes of the organizational performance;
2. Responsibility: duties are performed with sufficient ability and efficiency;
3. Equitable treatment: all stakeholders must be treated equally;
4. Transparency: assessment of the overall operation and information disclosure;
5. Vision: creation of long-term value without compromising short-term capability; and
6. Ethics: good corporate governance and business ethics.

In 2009, SEPO revised the guidelines to be comparable to OECD Guidelines on Corporate Governance of State-Owned Enterprises 2005. And the cabinet approved the updated guidelines on 3 June 2009.

In order to ensure that the appointed board member has appropriate skills and knowledge. SEPO introduced a directors' pool in 2008, a list of specialists with the requisite knowledge, skills and expertise. The qualifications of experts in the directors' pool must comply with the principles and procedure of the directors' pool approved by the cabinet. In this regard, the General Qualifications of Member and Official of State Enterprise Act, B.E. 2518 (1975) and its Amendment (No. 6) B.E. 2550 (2007), stipulates that at least one-third of board members of the SOE who are not ex officio of any state enterprise shall be selected from the directors' pool of the Ministry of Finance.

4. The Role of Professional Service Providers

Audit firms

The SEA requires listed companies to submit both quarterly financial statements and financial statements for any accounting period, reviewed or audited (as the case may be) by an auditor. Moreover, the SEA also requires that auditors must be on the approved list of the SEC. Auditors who perform their duties to a professional standard will enhance the investors' confidence in the financial reports.

Securities analysts

The SEC promotes good corporate governance among listed companies by encouraging securities companies to consider corporate governance practices in listed companies in which they invest. As mentioned earlier, starting in 2008 the SEC requested securities companies in to include a corporate governance scorecard devised by the CGR in their reports.

Credit Rating Agency

Currently there are two approved credit rating agencies in Thailand, TRIS Rating Co., Ltd and Fitch Ratings (Thailand) Ltd. The rating methodology covers two main components; (1) business risk, encompassing an analysis of the industry and the business itself; and 2) financial risk, primarily focusing on quantitative factors, such as financial ratios, and qualitative aspects ranging from accounting practices to financial policy. The business risk criteria include corporate governance factors, such as management quality and transparency and organization structure.

5. Enforcement of Corporate Governance Rules

The SEC, the SET, and other enforcement agencies have implemented several actions to enhance the enforcement. For example:

- **Unfair securities trading:** the SET monitors and investigates securities trading practices. Irregular practices that may violate the securities law, are sent to the SET proposed such cases to the SEC for deliberation;
- **Related-party transactions:** the SEC closely monitors related-party transaction/material transactions deemed as acquisition or disposal of assets in order to deter inappropriate transactions that may cause improper benefit transfers. Should the SEC find ambiguous transactions, or an intention to report false information or concealment of information, it will take immediate action. For example:
 - Requesting the company to submit clear and sufficient information;
 - Encouraging more critical analysis on appropriateness and impacts of ambiguous transactions by issuing a public announcement;
 - Urging investors to attend the shareholders meeting for protection their own interests;
 - In cases of suspected fraudulent transactions, the SEC will conduct in-depth investigations. If there is enough evidence, the SEC will file criminal complaints. As a result of the complaints, affected directors and executives shall not maintain his position in the company;
 - Since financial advisors have a major role in giving independent and professional opinions on transactions, the SEC regularly monitors the performance of their duties to ensure that they adhere to the governing rules, as well as the professional standards. The SEC also imposes punitive measures on financial advisors who fail to fulfill their duties in accordance with the rules;
- **Financial statement:** The SEC, in cooperation with the Federation of Accounting Professions (FAP), extensively monitored auditors' performance. 100% of auditor reports on the submitted financial statements are reviewed. If any suspicion arises, the SEC will also review their working papers to ensure that the financial statements are reliable and comply with the Thai accounting standards. For non-complying companies, the SEC will order them

to make appropriate amendments as well as impose sanctions on the auditor and companies concerned (including directors and the executives in certain cases).

- **Cooperation of enforcement agencies:**

- The SEC and the Department of Special Investigation (DSI) of the Ministry of justice strengthened cooperation to enhance the use of both organizations' integrated expertise including the DSI's greater power of investigation to secure facts and evidence for actions against the wrongdoers; and
- The SEC became a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of information (IOSCO MMoU) to enhance effectiveness of cross-border enforcement.

- **Mechanisms for effective enforcement:** the Amended SEA provides more supportive mechanisms for effective enforcement of the securities law such as whistleblower protection and reward money or any persons who provide information on insider trading or market manipulation, etc.

6. Recent Developments in Corporate Governance

The Thai capital market corporate governance development has progressed significantly as can be seen from several reports such as those conducted by the Asian Corporate Governance Association. However, there are still areas for improvement. For example: the legislation on civil penalties and the class action law, which would help make enforcement of the Securities and Exchange Act more efficient, are in progress; the effectiveness of independent directors and internal control, which would be a substantial factor of check and balance system; and active roles of investors to promote good corporate governance among listed companies.

Corporate governance takes time to evolve and the target keeps moving with the increasing new demands from investors. However, with the strong support from the government and the high level of commitment from the relevant parties, the SEC believes that investors' confidence in corporate governance of Thai listed companies will significantly increase.

Key Corporate Governance Rules and Practices in Thailand

Element	Yes	No	Source(s) of Rule	Comments
RIGHTS OF SHAREHOLDERS				
Do shareholders add items to the agenda for shareholders' meetings?	X		CL, SL, CGC	
Do shareholders ask questions of directors at shareholders' meetings and do they receive answers?	X		CGC, GP	
Must company transactions with its insiders be on a non-preferential basis?	X		SL, CGC	
Composition and Role of Boards of Directors				
Must boards have independent directors?	X		SL, SLR, CGC	At least one third of the board size shall be independent directors, and in any cases, the number shall not be less than three persons.
Do independent directors oversee (i) internal and external audit and (ii)	X		SLR, CGC	(i) The listing rule requires that an overseeing of internal and external audit is audit committee's functions. Audit

Element	Yes	No	Source(s) of Rule	Comments
executive compensation?				committee composing of at least three members, which included all independent directors. (ii) The CG code recommends that an executive compensation should be considered by the remuneration committee. In addition, the majority of the remuneration committee member should be independent directors.
Does an independent director decide what information the board receives from management?		X		The CG code recommends that the chairman of the board and the managing director should set the board meeting agenda together and ensure that all important issues are already included.
Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	X		CGC	The CG Code recommends that roles and responsibilities of the chairman of the board are different from those of the managing director. The board should separate the roles and responsibilities of both positions. In order to achieve a balance of power, the two positions should be held by different individuals. According to the 2008 Corporate Governance Report, it indicated that 86% of listed companies complied with such recommendation.
Are the board members elected annually?		X		The Public Company Act stipulates that a public company has to use cumulative voting for the election of directors but it also allow companies to opt-out. In case of using cumulative voting, the whole board of directors shall be simultaneously elected. However, if an election is not cumulative voting, one-third of directors shall retire.
Does the board oversee enforcement of a company code of conduct?	X		CGC	According to the CG Code, listed companies are required to disclose in their annual reports whether they comply with the Principles of Good Corporate Governance for Listed Companies. Any non-compliance has to be explained in an annual report.
TRANSPARENCY AND DISCLOSURE OF INFORMATION				
Is the identity of the five largest shareholders disclosed?	X		SL	
Is compensation of company executive offices disclosed?	X		SL	The SEC requires that listed companies disclose the remuneration paid to each director and disclose total remuneration paid to executives of the company (remuneration means both of financial and non-financial compensation).
Are extraordinary corporate events disclosed?	X		SL, SLR	
Are risk factors disclosed in securities offering materials?	X		SL	

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory