

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)**Corporate governance country assessment****THAILAND****June 2005****Contents**

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Executive summary**Achievements**

Since 1998, significant corporate governance reforms have been introduced and are underway, including reforms in the structure and function of the board of directors of listed companies, the establishment of the Thai Institute of Directors Association and the Department of Special Investigation, the adoption by the SET of 15 Principles of Good Corporate Governance, and draft legislation to reinforce the rights of minority shareholders. In addition, the SEC has improved its monitoring of financial statements of listed companies and stepped up enforcement efforts and increased sanctions for violations. Most recently, the SEC has supported issuance of a Directors' Handbook and the establishment of a Director Registry System. The ICAAT also has intensified its efforts to improve skills and knowledge of accountants and auditors.

Key Obstacles

Reforms in the legal framework have been slow and need to be expedited. There is a lack of a range of sanctions — criminal, civil and administrative — to facilitate effective enforcement. International Financial Reporting Standards have yet to be adopted. The private sector's awareness of the potential benefits of improved corporate governance may need to be further enhanced.

Next Steps

Further steps need to be taken to enhance protection of shareholder rights, including the introduction of cost effective legal channels for shareholders seeking redress. The focus should remain on implementation and on completing the legislative and regulatory agenda, improving enforcement (prosecution process), enhancing financial reporting and disclosure consistent with international standards, and promoting business ethics and best practices.

TERMS/ACRONYMS

AGM: Annual General Shareholders Meeting.

CEO: Chief Executive Officer.

Code: The 15 Principles of Good Corporate Governance, issued by the SET as a concise version of the earlier 40 Principles.

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.

EGM: Extraordinary Shareholders Meeting.

FAP: Federation of Accounting Professions.

GDP: Gross Domestic Product.

ICAAT: Institute of Certified Accountants and Auditor of Thailand.

IFRS: International Financial Reporting Standards.

IOD: Thai Institute of Directors Association.

ISA: International Standards on Auditing.

MAI: Market for Alternative Investment.

NCS: National Clearing and Settlement System.

OECD: Organization for Economic Cooperation and Development.

PCA: Public Limited Company Act.

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.

Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.

RPT: Related party transactions. The OECD Principles of Corporate Governance hold that it is important for the market to know whether a company is being operated with due regard to the interests of all its investors. It is therefore vital for the company to fully disclose material related party transactions to the market, including whether they have occurred at arms-length and on normal market terms. Related parties can include entities that control or are under common control with the company, and significant shareholders, such as relatives and key managers.

SEA: Securities and Exchange Act.

SEC: Securities and Exchange Commission.

SET: Stock Exchange of Thailand.

SOE: State owned enterprise.

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.

Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.

TAS: Thai Accounting Standards.

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.

Country assessment: THAILAND

Thailand continues to make progress in improving corporate governance.

Since 1998, Thailand has made significant progress in improving its corporate governance. In 2002, the National Corporate Governance Committee was established, and the year 2002 was officially designated as the Year of Corporate Governance. The committee is presided over by the Prime Minister, with participation from the private sector. Six sub-committees have been established to intensify efforts to improve various aspects of corporate governance practices. The effort has been focused on enhancing regulatory enforcement, instituting market discipline, and promoting self-regulation.

Significant corporate governance reforms have been introduced in recent years

A revised draft of the SEC Act has been prepared and regulations to improve the corporate governance of financial institutions issued. The revised SEC Act is expected to enhance fiduciary duties of directors, including sanctions for violation of those duties, and strengthen the rules governing related party transactions. The SEC has improved its monitoring of audited financial statements and annual reports of listed companies. Improved guidelines on the role of audit committees are expected to be issued soon. On the banking side, the Bank of Thailand (BOT) has issued regulations to improve corporate governance of financial institutions; among other things, the regulations cover the number of independent directors and functions of various committees of the boards of directors. A director's handbook for directors of banks has been issued by the BOT to facilitate implementation of the regulations.

To promote good practices, the Thai Rating and Information Service (TRIS) has been designated by the authorities as the sole corporate governance rating agency for listed companies in Thailand. The SET and SEC have provided incentives to companies to be rated by the TRIS as a means of promoting good practices. Several listed firms have already been rated.

As of May 2005, more than 1,600 directors have completed the Thai Institute of Directors' (IOD) 51/2-day Director Certification Program. The Institute of Certified Accountants and Auditors of Thailand (ICAAT) has also intensified its efforts to improve skills and knowledge of accountants and auditors. ICAAT has established a Certified Financial Officer and a Certified Management Accountant program. Efforts are also underway to improve and expand the Continuing Professional Education (CPE) for accountants and auditors, develop practical guidelines and interpretation of accounting standards, and develop accounting practice guidelines for SMEs.

However, the reform agenda remains incomplete. Changes in the regulatory framework need to be extended to actual practice.

While these are commendable efforts, the reform agenda remains incomplete, both in terms of legislative and regulatory reform, and in terms of changes in practices. Progress in revising relevant laws including the Public Limited Companies Act (PCA) and Securities and Exchange Act (SEA) and the drafting of class action lawsuit has been slow. It is important to set a reasonable time frame for authorities for enactment of these legislations. In the area of financial reporting and disclosure, Thailand has announced a plan to fully adopt international accounting standards by 2006.

The question that remains is the extent to which these efforts have translated into improvement in actual practices. Corporate governance reform is a long-term process. It requires changes in incentives and behavior. There is an urgent need to persist with corporate governance reform and complete the unfinished agenda in order for Thailand to further develop its capital market and increase its

competitiveness. Key recommendations are highlighted below.

Market profile and institutional framework

Total market capitalization of listed companies on the SET is approximately 70% of GDP

As of June 2005, the total market capitalization of listed companies on the SET amounted to approximately Baht 4,650 billion (US\$ 113 billion), or 65% of the country's GDP, while the turnover ratio (annualized) in 2005 (January-June) was 97%, compared to 108% in 2004.¹ The average daily turnover decreased by 10% to Baht 18,497 million (US\$ 451 million). The total market capitalization of companies listed on the MAI, which is relatively smaller than the SET in all respects, increased 244% from approximately Baht 3,480 million (US\$ 87 million) in 2002 to Baht 11,998 million (US\$ 293 million) in June 2005, which is equivalent to one percent of the country's GDP. As of June 2005, there were 451 companies listed on the SET, including 5 SOEs², and 26 companies on MAI.³

The legal framework is based on the securities law, the SEA, which is implemented by the SEC, and the companies law, the PCA, which is implemented by the Ministry of Commerce.

The principal laws governing the capital market are the SEA and the PCA. The SEA mainly governs issues in connection with the capital market, the secondary markets, the issuance and offering of securities, unfair securities trading practices, takeovers, and the undertakings of securities businesses. The PCA is administered by the Ministry of Commerce. It deals with public limited liability companies in general, including provisions on shareholders' rights and protections. The SEA is enforced by the SEC. The SET and the MAI are the only stock exchanges in Thailand. The SET is the main exchange, while the MAI is the exchange for small and medium sized companies. Both the SET and MAI are under the supervision of the SEC. The same reporting and disclosure requirements, and corporate governance rules apply to companies listing on the SET and the MAI.

Key issues

The following section highlights key observations of the principle-by-principle assessment of Thailand's compliance with the OECD Principles of Corporate Governance.

Investor protection

Basic shareholder rights are protected, but concentrated control limits the influence of minority shareholders

Basic shareholder rights are largely in place in Thailand. Share registration is secure and shares are freely transferable. Shareholders can obtain material information from the company and are entitled to attend and vote in the annual general meeting (AGM). Nevertheless, because company control is concentrated, and cumulative voting, although permissible, is rare. Most company boards are dominated by the controlling shareholders.

There are some constraints on shareholder participation in the AGM

While shareholders may participate in the AGM, it is difficult for minority shareholders to propose additional agenda items. Legislation to address this problem is currently under the consideration of the Council of State, however, it is unclear if and when such legislation will be adopted. In addition, because most company boards are selected by controlling shareholders, it is difficult for minority shareholders to make their influence felt. This is changing gradually,

¹ This compares with Malaysia which has a market capitalization of approximately 160 percent of the GDP.

² MCOT Plc., Thai Airways International Plc., Krung Thai Bank Plc., Airports of Thailand Plc., and PTT Plc.

³ Many listed firms have pyramid ownership structure, but listed as a separate firm since the notion of holding company is not practiced in Thailand, except for banks. The closely held firms are most active in agriculture (CPF, UPOIC) and steel (NSM, SSSC, and STPI) sectors.

however, through active participation of the Thai Investors Association at AGMs of listed companies.⁴

Disclosure

Basic disclosure requirements are in place.

Listed companies submit quarterly and annual financial statements, which are reviewed and audited by the company's auditor and are available to the public. In addition, timely disclosure is required upon the occurrence of an event which may have a material effect on the company. SEC regulations also require disclosure by listed companies of top 10 shareholders and of the identities of the ultimate beneficial owners of those shareholders. Related party transactions also must be disclosed.

A new system of independent oversight over the audit profession

The Federation of Professional Accountants has recently been established. It is too early to determine how this new organization will help improve the audit profession. While a great deal of effort has been expended, further improvements are required. Thailand accounting standards are not yet fully consistent with international accounting standards.

Company oversight and the board

Limited understandings of duties of care and loyalty

While the concepts of fiduciary duty, duty of care and duty of loyalty are embedded within the law, in practice, particularly in smaller companies, it appears that directors have only a limited understanding of their roles and responsibilities.

Boards dominated by controlling shareholders

Thai law provides that board members are to be nominated and elected by the AGM. In practice, controlling shareholders nominate the directors and AGM approval is a mere formality.

Director independence is quite limited, particularly in smaller companies

The requirement that all listed companies have an independent audit committee should improve the effectiveness of boards of directors of listed companies, over time. However, it is still too early to determine whether these audit committees are acting independently from the management, particularly in smaller companies.

Legal Enforcement

While recent enforcement efforts are welcome, more aggressive prosecution is necessary

Legal enforcement remains a major challenge. For corporate governance reforms to result in improved practices, managers and directors must appreciate that implementation is important and will be enforced. Recent court cases have resulted in more stringent fines and imprisonment for corporate fraud. These developments send an important signal about the importance of compliance and enforcement. Regulators and prosecutors should continue these stepped up efforts.

Recommendations

Thailand has made significant strides in improving corporate governance in recent years. The focus should remain on implementation and on completing the legislative and regulatory agenda, improving legal enforcement, enhancing financial reporting and disclosure consistent with international standards, and

⁴ In 2004, the Thai Investors Association (TIA) invested in 375 listed companies and attended 127 shareholder meetings. In 2005, thus far, TIA has attended as many as 150 AGMs. Its accomplishments include gathering proxies from minority shareholders to remove management of a listed company.

promoting business ethics and good practices.

Legislative and regulatory reforms are both important

Legislation to strengthen minority shareholder rights should be adopted

Proposed amendments to the SEA and the PCA constitute important efforts to increase the protection of minority shareholders. Ratification of the SEA amendment would clarify and strengthen the fiduciary duties of board members while proposed PCA amendments would strengthen shareholders' rights and give them more voice in the conduct of AGMs. The legislative process has been slow and uncertain, however, and it is not clear that these legislative amendments will ultimately be adopted.

Additional reform would strengthen the corporate governance framework

Additional legislation to strengthen minority shareholder rights is needed, including

Cost effective legal channels for shareholders seeking redress. Progress has been made in drafting the proposed Class Action Act. However, there is still a need to consider additional measures to protect minority shareholders from controlling shareholders abuse by ensuring that board members act for the benefit of all shareholders. To this end, it is also recommended that director registration be for a limited term (3-5 years) with mandatory refresher training as a condition for re-registration.

Dismissal of a director. It is recommended that consideration be given to simplifying the process for the removal of a board member. This would require an amendment to the PCA. Also, it is recommended that additional steps to allow minority shareholders a greater voice in the selection of directors be considered, including making cumulative voting more commonly used, and possibly mandatory, for listed companies under certain conditions.

Proxy Solicitation. Policy makers should focus on abuses of proxy solicitation which may occur in listed companies. It is recommended that the SET and MAI work closely with the SEC to establish a set of rules for proxy solicitation to apply to all listed companies. International good practice suggests allowing the electronic appointment of proxies. Once the proposed amendments to the SEA are enacted, these rules will refer to the SEC's regulations as the governing rules. It is also recommended that consideration be given to allowing shareholders to cast votes electronically.⁵

Cross-border voting. The 21-day period between XM announcement date and the date of AGM is too short for depository banks to collect voting instructions from beneficiaries. To facilitate further the exercise of cross border voting, policy makers should ensure that there are no legal impediments to the electronic appointment of proxies, in line with international good practice.

Regulatory and self-regulatory action is important, particularly in light of legislative uncertainty.

Legislative reforms of corporate governance requirements, while important, are at best slow and their effectiveness is not at all certain. Therefore, the regulatory authorities and the stock exchanges should be proactive where possible and consider the inclusion of the proposed amendments in their listing rules. This would accelerate the improvement of corporate governance practices for listed companies, , and strengthen the likelihood of legislative ratification.⁶

⁵ The legal framework already acknowledges the use of such technology as legal evidence in the case of legal disputes.

⁶ A large number of public companies are now preparing to do IPOs, so it can be expected that the number of non-listed public companies, which are not

Expand the coverage of the rules on conflicts of interest and self-dealing

Thai law prohibits insider trading and requires board approval for self-dealing by directors. The SET rule reiterates the issue by imposing self-dealing rules to exclude potential conflicts of interest. However, the law in self-dealing should be expanded to cover conflict-of-interest transactions involving controlling shareholders in listed companies and non-listed subsidiaries.

Clarify the regulations governing the activities of institutional investors

There is a requirement that Asset Management Companies acting on fiduciary duty to disclose their voting records on their website as well as on an-ex-post basis. It is recommended that consideration be given to extend the same requirement to all institutional investors.

The SEC may wish to consider issuing a regulation clarifying the circumstances under which consultation and voting agreements between institutional investors may take place without triggering the provisions of the SEA (1992) regarding substantial acquisitions of shares, or those concerning market manipulation. If an agreement is reached between institutional investors to vote together at a shareholders' meeting, such cooperation should be disclosed to the SEC and the market before the shareholders' meeting. Some institutional investors might resist such disclosure and prefer to remain anonymous in order to preserve other commercial relations with the company. However, from a policy standpoint, the greater the transparency, the more efficient the Thai capital market, and the greater its integrity.

Increase the accountability of directors and management and further clarify fiduciary duty of directors

It is recommended that further efforts be expended to improve the independence of outside directors.⁷

The audit committee's role should be clarified to increase its effectiveness

While all listed companies are now required to set up an independent audit committee, the independence and effectiveness of these committees remain as major challenges. The effectiveness of audit committees of boards of directors needs to be improved. It is recommended that steps be taken to clarify and strengthen the role and function of audit committees, consistent with international best practices. Additionally, use of outside experts should be encouraged.

In addition, it is recommended that the duties of audit committees be broadened to include the oversight of insider conflicts, and to oversee business advisory / consulting services, per international best practice. It is also recommended the audit committee's role with respect to consulting services relate to both the nature as well as the extent of such services rendered by the external auditor.

Additional board committees could be helpful in improving accountability

Additional board committees could be helpful in improving accountability. It is recommended to consider requiring remuneration and nomination committees for listed companies. The remuneration committee would focus on board performance and pay, and the nomination committee would deal mainly with recruitment of high level management and executives and matters relevant to nomination. Each should largely consist of outside directors.

owned by the general public, will be few.

⁷ The increasing numbers of directors completed at least one of the IOD's training courses. Thus far, 99% of directors of listed companies already have their directors attending one of the courses and the SEC requires them to disclose details on IOD courses that directors have attended. While education helps, the process for nomination of independent directors needs to be strengthened.

Codes of Conduct should be required for listed companies

Thai law grants all shareholders of a class the same legal rights. However, in most companies the board is controlled by the major shareholders, and minority shareholders are not always treated fairly. The SET should require all listed companies to have a Code of Conduct, and to disclose their compliance with their Code in their annual reports. Audit committees should be required to review company compliance with such code. Companies should be encouraged to add protections for whistleblowers in their codes of conduct, and to establish a hotline for receiving tips on fraudulent behavior.

Directors must have a better appreciation of their role and responsibilities

Directors of companies listed on the SET are highly recommended to attend training at the Thai Institute of Directors, which was established in 1999. This has been an important and commendable step.⁸ However, more directors need to undergo the Institute's training to ensure that all Thai board members are fully aware of their role and responsibilities. In addition, efforts should be made to improve the independence of outside directors. The new system of SEC director registration should be a useful tool to monitor the behavior of listed company directors.

Board evaluation procedures should be introduced

It is recommended that directors be required to evaluate the performance of their colleagues, once a year for example. Furthermore, it should also be considered whether or not to limit the number of boards on which directors are permitted to serve, or to make it, at a minimum, subject to mandatory disclosure.

Further improve quality and reliability of financial information and disclosures provided by public companies

Set target date for full convergence with international accounting and auditing standards

Accounting and auditing standards and practices need to reach convergence with international standards and be consistent with international best practices. It is important for the relevant authorities to set the target date for the completion of convergence. Accountants need to continue to be trained on international standards, and the process for taking disciplinary actions and imposing sanctions on those accountants who violate duties and commit fraud needs to be improved.

Introduce disclosure certification

It is recommended that considerations be given to requiring management (CEOs, CFOs) of listed companies to include in the annual reports a statement on their responsibility for establishing and maintaining adequate internal controls over financial reporting and compliance with applicable laws and regulations, as well as an assessment of effectiveness of their internal controls consistent with international best practices. External auditors should render an opinion on such reporting in the future.

Oversight of financial reporting of listed companies

The SEC should continue to comprehensively and regularly review all listed company financial statements, including those that may have appearance/indication of potential issues.

Encourage disclosure by custodians

The SEC should consider asking entities that act as professional custodians to seek their customers' agreement that they may comply with applicable regulatory disclosure requirements, including, for example, disclosing to the SEC the identity of the ultimate beneficial owners, without breaching their confidentiality agreement with their customer.

⁸ As of May 2005, approximately 1,600 directors have completed the five-day Directors Certification Program.

Establish corporate governance enforcement priorities

Strengthen the independence of the SEC

The SEC consists of a Board, which sets policy, and an Office, which implements the policies and deals with day-to-day operations. The Board is chaired by the Minister of Finance. Although the Minister does not attend board meetings, this governance structure gives the appearance that the SEC is not a fully independent regulatory body, consistent with international good practice. It weakens the SEC's authority and can ultimately undermine the perception of market integrity by market participants. The proposed amendment to the SEA, which provides that the Board be chaired by a competent person other than the Minister of Finance, should be expedited to help ensure that the SEC can not be subject to political intervention in its oversight of the activities of publicly listed companies and market participants..⁹

Improve enforcement for violation of laws

Recent improvements in enforcement need to be reinforced. The SEC should continue to further enhance the skills and knowledge of its own investigators; More severe sanctions on insiders for false and misleading disclosure should be introduced. The SEC should have full cooperation from other criminal authorities to improve the effectiveness of criminal enforcement actions.

Introduce administrative and civil sanctions

Although criminal enforcement is improving, the process is still lengthy and involves high standard of proof. The authorities should, therefore, consider the introduction of civil penalties and administrative sanctions as more efficient alternative to impose on violators.

The judiciary must be trained to address corporate governance violations.

In recent criminal cases the Thai judiciary has responded strongly to corporate fraud. These cases set a useful precedent and serve as a deterrent for future misbehavior. Nevertheless, the Thai authorities must ensure that such cases are not *sui generis*, and that the judiciary in general is familiar with corporate governance requirements and becomes used to adjudicating corporate law cases. Training should continue to be provided to prosecutors and judges on a regular basis on the essentials of the capital market and related laws, to ensure understanding of the intent of the law. Establishment of a specialized court to deal with corporate and securities related disputes should be considered.

⁹ The issue of independence of the SEC was discussed during the drafting of the existing SEA and has been proposed as an amendment to the SEA so that the SEC will no longer be supervised by the government agency, namely, the Ministry of Finance, to ensure that it is free from political interference.

Summary of Observance of OECD Corporate Governance Principles: Thailand and World Average

Principle		Thailand	ROSC Average
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK			
IA	Overall corporate governance framework	75	N.a
IB	Legal framework enforceable and, transparent	75	N.a
IC	Clear division of regulatory responsibilities	75	N.a
ID	Regulatory authorities have sufficient authority, integrity and resources	75	N.a
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS			
IIA	Basic shareholder rights	75	69
IIB	Rights to participate in fundamental decisions	50	64
IIC	Shareholders AGM rights	75	63
IID	Disproportionate control disclosure	75	50
IIE	Control arrangements should be allowed to function	50	56
IIF	The exercise of ownership rights should be facilitated	75	28
IIG	Shareholders should be allowed to consult with each other	75	N.a
III. EQUITABLE TREATMENT OF SHAREHOLDERS			
IIIA	All shareholders should be treated equally	50	56
IIIB	Prohibit insider trading	75	56
IIIC	Board/Mgrs. disclose interests	75	45
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE			
IVA	Legal rights of stakeholders are to be respected	75	69
IVB	Stakeholder redress	75	68
IVC	Performance-enhancing mechanisms	75	68
IVD	Stakeholder disclosure	75	75
IVE	"Whistleblower" protection	50	N.a
IVF	Creditor rights law and enforcement	50	N.a
V. DISCLOSURE AND TRANSPARENCY			
VA	Disclosure standards	75	73
VB	Accounting standards	50	77
VC	Independent audit annually	75	66
VD	External auditors should be accountable to the shareholders	75	N.a.
VE	Fair & timely dissemination	75	67
VF	Research conflicts of interests	75	N.a
VI. RESPONSIBILITIES OF THE BOARD			
VIA	Acts with due diligence, care	50	55
VIB	Treat all shareholders fairly	75	49
VIC	High ethical standards	50	68
VID	The board should fulfill certain key functions	50	46
VIE	The board should be able to exercise objective judgment	50	41
VIF	Access to information	75	68

PRINCIPLE - BY - PRINCIPLE REVIEW OF CORPORATE GOVERNANCE

This section assesses Thailand's compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed. **Observed** means all essential criteria are met without significant deficiencies. **Largely Observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially Observed** means that while the legal and regulatory framework complies with the Principle, practices and enforcement diverge. **Materially Not Observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

SECTION I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

Assessment: Largely Observed

General statement on CG. Since the 1992 reforms, sound legal, institutional and regulatory frameworks govern the functioning of the Thai capital market. As a result the market has grown significantly. The main laws enacted in 1992 were the Public Limited Company Act, B.E. 2535 (1992) (PCA), and the Securities and Exchange Act, B.E. 2535 (1992) (SEA). Together, these pieces of legislation establish the market's foundation, structural framework, supervisory framework, and enforcement rules. Recently, considerable improvements and developments in corporate governance have been introduced, spearheaded by different interested parties, including the regulators (the SEC and the SET), directors and management of listed companies, public accountants, and market activists (the Thai Investors Association). The framework is now largely in place to ensure competent, ethical, accountable and transparent corporate governance practices in the country.

Capital markets. Thailand's main exchange, the SET, was established in 1975. It is governed by the SEA (1992). As of June 2005, SET's market capitalization was Baht 4,649 billion. As of June 2005, there were 451 companies with 556 securities listed on the SET. A large number of companies were queuing for listing. However, the market remains highly concentrated, with only a handful of large companies accounting for a significant portion of the total market capitalization and trading volume. Hence, the market capitalization of the top ten companies accounted for approximately 46% of total market capitalization¹⁰. Shareholders, in particular institutional investors, take an active role in the governance of listed companies, and do attend AGMs. Foreign institutional investors play a significant role in the trading of companies belonging to the SET Index. As of May 2005, there were 47 broker-dealers, only one of which had suspended its activity, and 29 of them offered trading via the Internet.

The average free float of the SET50 companies was 49% whilst the average free float of SET as a whole was approximately 38%. The SEC has introduced a mechanism (in the form of veto rights) to ensure the participation of minority shareholders in important decisions. In case of fundamental matters such as delisting from SET, share capital increases, offering of shares to management or employees, resolutions must be approved with a 75% majority of shareholders present and voting, and objection votes must be less than 5-10% of the same.

Institutional Investors. Both foreign and local institutional investors are active in Thailand. Domestic institutional investors in Thailand are very small. At the end of March 2005, the total net asset value of mutual funds in Thailand was 748 billion Baht, of which 290 billion Baht was investment in equity (about 6% of the SET's total market capitalization). Insurance companies have been allowed to invest in equity market with a ceiling, consistent with prudential regulation. Their total investment in equities at the end of 2004 was only about 1.2% of the market. Foreign institutional investors are quite active in Thailand and often drive the market. Since investment by both domestic and foreign institutional investors is highly concentrated in the top largest listed firms, their role in disciplining listed companies is limited to large firms.

Ownership framework. Because a handful of families control a majority of the listed companies, major shareholders have near absolute control in listed companies.¹¹ Consequently, they tend to effectively control the companies' AGMs. The Foreign Business Act, B.E. 2542 (1999) restricts foreign share ownership in companies, including listed companies, undertaking specified types of business to various thresholds. In practice, foreign investors use nominee(s) to invest above

¹⁰ PTT Public Company Limited, Advanced Info Service Public Company Limited, Siam Cement Public Company Limited, Bangkok Bank Public Company Limited, PTT Exploration and Production Public Company Limited, Kasikorn Bank Public Company Limited, Shin Corporation Public Company Limited, Krungthai Bank Public Company Limited, Thai Oil Public Company Limited, and Thai Airways Public Company Limited.

¹¹ It is believed that, in 2004, 26 families controlled approximately 66 percent of the market capitalization of the SET. This compares with 75 percent for the same number of families in 2001.

the legal threshold or choose to hold shares through Non-Voting Depository Receipts (NVDRs). There are also laws that restrict foreign ownership in banking, financial institutions, and insurance companies specifically. Cross-holdings structures are not permissible for new companies seeking to become listed while existing listed companies have until the end of 2007 to resolve the said structures.

Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

Assessment: Largely Observed

Corporate legal framework. The SET requires that a listed company be in the form of a public limited liability company under the PCA. The Thai Civil and Commercial Code (CCC) also provide for limited liability companies, but these must be converted into public companies before listing.

Company types. As of June 2005, there were a total of 265,557 limited liability companies, and 808 public limited companies. Approximately 450 out of these public limited companies were listed on the SET.

Securities law framework. The SEA (1992) along with the PCA is the principal laws governing the capital market. The SEA provides for the overall structural framework of the capital market, including the supervisory authority (the SEC), the exchanges (the SET and the MAI), the securities business, related agencies – e.g. custodian (in case securities company is the service provider), registrar, settlement houses, general as well as disclosure requirements, unfair securities trading practices, takeovers and enforcement. The PCA deals with public limited companies at large. In addition to its provisions regarding the establishment and registration of companies with the Ministry of Commerce (MOC), it also imposes corporate governance requirements on public companies, including, for example, matters relevant to shareholders protection, shareholders meetings, voting, and agenda procedures, sets the duties and responsibilities of directors, and sanctions in case of violation of the Act. Both the SEA and PCA are in the process of being amended to incorporate, among other things, measures intended to promote and ensure better good corporate governance. As the MOC and the SEC both have jurisdiction over public limited companies, they cooperate in the formulation of amendments to the PCA that fall within their constituted responsibilities, e.g. shareholders participation in the general meeting, proxy forms, proxy solicitation, etc. To complement the SEA and PCA, the SEC and SET promulgate regulations to deal with ongoing capital market issues.

Listing rules. In 2005 the SET issued new listing rules granting companies a limited grace period for compliance. Under the new listing rule, to be eligible for listing, a company must have at least Baht 300 million of paid-up capital, a minimum of 1,000 shareholders, and at least three-years audited financial statements, and must have operated under substantially the same management for at least one year prior to the date of the application for listing.

Code. The SET issued the 15 Principles of Good Corporate Governance in 2002. This is a more concise version of its predecessor 40 Principles. Companies applying for an SET listing must comply with the 15 Principles on a “comply-or-explain” basis. The SEC recently endorsed the 15 Principles and required companies applying for securities offerings to comply with them on the same basis. The SET and the SEC both monitor compliance with the 15 Principles in line with their respective responsibilities. The SET ensures compliance by companies seeking a listing, either on the SET or the MAI. The SEC requires that the 15 Principles be disclosed on a “comply or explain” basis in the registration statement filed by companies seeking to make public offerings. The SET and SEC have provided incentives to companies to be rated by the Thai Rating and Information Service (TRIS), which has been designated as the sole corporate governance rating agency for listed companies in Thailand. In addition, the Thai IOD offers training courses for corporate directors. The SEC strongly recommends all directors to attend at least one training course at the IOD, and to date, 99% of listed companies already have their directors attending at least one of the courses.

Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Assessment: Largely Observed

Securities regulator. The SEC generally plays the most significant role in regulating the capital market. As the securities regulator it regulates every activity relating to the securities business, including the activities of listed companies, securities offerings, broker/dealer companies, investment advisory companies, asset management companies, custodians, (in case securities company is the service provider), registrars, credit rating agencies, and associations relating to the securities business. Its mission statement is to “Develop and supervise the Thai capital market to ensure efficiency, fairness, transparency and integrity,” and providing protection to minority shareholders is one of its top priorities. It has recently exercised its statutory power in the preventive manner to deal with anyone who seems to be committing wrongdoing under the securities law. In the past few years, the SEC has used its power to take preventive measures in a few cases. The SEC interrogated listed companies planning to enter into transactions that created suspicions or could have been detrimental to minority shareholders. Certain companies which could not justify the plan eventually agreed to drop the planned transactions. Those cases involved, for example, the intention of the management to provide unjustifiable financial assistance to other entities that related to directors, or the intention to acquire assets at unreasonable high price.

Stock exchanges. The SET, originally established in 1975 and currently operating under the authority of the SEA, is a non-profit legal entity and the main exchange in Thailand. The MAI is an SET wholly-owned subsidiary established on June 21, 1999 as an exchange for SMEs. The SET is governed by a Board of Governors, under the supervision of the SEC. In certain matters, the SET works in cooperation with the SEC. In general, the SET assumes the front-line responsibility for market surveillance; it reports suspected violations to the SEC. Previously the SET had the responsibility to supervise listed companies and member securities companies, although its rulemaking power, in many instances, had to be submitted for the approval of the SEC, resulting in duplication in rules and regulations, listing procedures and inspection and enforcement actions. Such duplication was eliminated in August 2000 when the SET and the SEC signed a memorandum of understanding (MOU) to more clearly specify their roles.¹² Henceforth, the SEC is responsible for the issuance and offering of securities in the primary market, while the SET is itself responsible for ensuring market integrity in the secondary market. The SEC and the SET coordinate to promote and ensure good corporate governance practices by the listed companies including, in particular, compliance with the 15 Principles of Good Corporate Governance, the arrangement to reward listed companies that have good corporate governance, and the implementation of the director registration system.

Central depository. The Thailand Securities Depository Co., Ltd. (TSD) is a subsidiary of the SET established under the SEA. One of its main functions is to develop and promote an efficient back-office system for after-trade services in Thailand, e.g. securities registration, fund registration, and back office service bureau. It acts as the central securities depository and the only clearing house and securities depository center (SDC) in Thailand, implementing an internationally accepted multilateral netting system for the clearing and settlement of securities traded on the SET and the MAI. Recently, the TSD has implemented the Delivery versus Payment (DvP) method for its clearing and settlement system.

Banking and other regulators. Established under the Bank of Thailand Act, B.E. 2485 (1942), the Bank of Thailand is the central bank and the supervisory authority for banks and financial institutions. The Minister of Finance has the power to oversee its overall affairs, with general control and direction being entrusted to its Board of Directors. Most Thai banks are publicly listed companies. They must therefore comply with the SEC's regulation in addition to the prudential regulations required by the BOT. The BOT observes compliance with the Banking Act while the SEC observes compliance with SEA.

Judiciary. There is no special purpose court to adjudicate corporate law cases. These cases are adjudicated in the criminal courts. The SEC, in this regard, has been providing trainings to judges and public attorneys. Specialized courts (i.e. the Tax Court, the Intellectual Property and International Trade Court, the Central Bankruptcy Court and the Central Labor Court) are not empowered to deal with corporate law disputes *per se* directly, unless the cases fall within the matters of their specialization. Given the complexity of corporate or securities related disputes, establishment of a specialized court dealing with such disputes could be considered. This specialized court should be organized in such a manner that it can provide a proper remedy promptly depending on the situation.¹³

Company Registrar. The Department of Business Development of the Ministry of Commerce is administrator of the Public Company Act. Its role mainly focuses on company registration, including public limited companies. It keeps and makes public companies' records of registration and other relevant documents, including companies' affidavits, memoranda and articles of association, and lists of shareholders and financial statements. The law requires those documents to be submitted when changed. As a public company, a listed company is regulated by the Ministry of Commerce as well as by the SET and SEC.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment: Largely Observed

Authority, integrity and resources of regulators. The Minister of Finance is the Chairman of the SEC. Although the Minister's role is nominal, there is an appearance that the SEC may not be able to fully and independently exercise its authority.¹⁴ The SEC is funded through 1) the initial endowment (provided under the SEA), 2) contributions from the SET,

¹² Under such MOU, the SEC will have the key role in setting policies as well as supervising disclosure and governance of companies making public offerings and listed companies, and supervising securities companies and their personnel. On the other hand, the SET will focus on the marketing role, such as increasing products, enlarging the investor base, developing services that respond to the needs of investors and other interested parties. It will also oversee securities trading, clearing and settlement, to ensure the integrity, transparency and efficiency of the marketplace.

¹³ The ease or difficulty of enforcing commercial contracts in Thailand is measured below, using three indicators: the number of procedures counted from the moment the plaintiff files a lawsuit until actual payment, the associated time, and the cost (in court and attorney fees), expressed as a percentage of debt value. In Thailand, the cost of enforcing contracts is 13.4, compared with the regional average of 57.0 and OECD average of 10.8 (Based on the study of Doing Business in Thailand by the World Bank.)

¹⁴ The Thailand IOSCO assisted self-assessment in April 2004 reported, "The SEC is accountable to the Minister of Finance who ensures that it operates in harmony with the policies of the government and cabinet resolutions." The SEC does not appear to be an "independent regulatory body" within the IOSCO definition of "independence" if it is chaired by and reports to the Minister of Finance.

and 3) fees collected from entities under its supervision.¹⁵ The pay scale of the SEC officers is generally higher than other government officials. However, it is not competitive compared to the private sector. Therefore, there is occasionally movement of its officers to the private sector, such as the asset management business.

Recently, the SEC has been increasingly active in monitoring corporate governance of listed firms. The Corporate Finance Department deals mainly with companies offering securities to the public, via public offering or private placement while the Enforcement Department investigates persons and companies that may have violated the law. The Accounting Supervision Department ensures quality disclosures of financial reports of listed companies while the Corporate Governance Department develops market practices and promotes corporate governance awareness across the capital market. The fact that capital market activities are increasing significantly has required the SEC to increase its staff and may require an increase in resources.

Information relating to SEC sanctions is made public via its website with brief details of the violation, the relevant provisions of law, and the amount of fine or measures undertaken. The amount of fines varies.¹⁶ The SEC is empowered mainly under the SEA, the Provident Funds Act, B.E. 2530 (1987, the Royal Enactment on Special Purpose Juristic Persons for Securitization, B.E. 2540 (1997), and the Derivatives Act, B. E. 2546 (2003). It assumes its primary responsibility for investigating possible offences of those laws. If it is deemed that a criminal violation has occurred, the SEC pursues the matter by filing a criminal complaint with the Royal Thai Police or the Department of Special Investigation (DSI), Ministry of Justice. The SEC does not prosecute the violation itself but works with the prosecutors by participating in an investigative team that, along with DSI and the SEC, includes an officer of the BOT and a member of the Office of the Attorney General (OAG). This working group structure is deemed effective to further investigation. However, under provisions of the same laws aforementioned, certain offences can be brought to the Settlement Committee appointed by the Minister of Finance. In this connection, if the fine is fully received within the period specified by the Committee, the matter is considered settled.

The introduction of the SEC Director Registry has added a new and potentially quite effective administrative sanction for directors of listed companies who breach their fiduciary obligations. The latter are to be eliminated from (or blacklisted) the Director Registry and therefore ineligible to serve as a director of a listed company.

Recognizing that the legal issues in disputes under the SEA are complex and require specialized knowledge of capital markets and the objectives of the law, its training is mandatory for new judges. In addition, the SEC provides annual training to existing judges and to the OAG.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:

Assessment: Largely Observed

(1) Secure methods of ownership registration	In Thailand, shares of public limited companies are issued in registered form. Registered shares and the identity of their owners are recorded in the company's register of shareholders. The shareholder register can be maintained by the company at its head office, or by another person designated by the company. It can be examined by the company's shareholders. The shareholder register is presumed accurate. Unless listed in the shareholder register, the transferee's right over the transferred shares shall not be in effect against third parties. However, the transferee's right against the company takes effect immediately upon the company's receipt of the transferee's request to have his/her shares registered in the shareholder register. Most listed shares are registered and deposited with the Thailand Securities Depository Co., Ltd. (TSD), the official depository wholly owned by SET. In practice, publicly listed firms rarely maintain share registration themselves. However, a physical share certificate may be issued upon request.
(2) Convey or transfer shares	Shares in public limited companies are freely transferable. However, companies can restrict share transfers for the purpose of preserving their lawful rights and interests, or to maintain the shareholding ratio of the Thais and foreigners under the relevant laws. The transferability of shares also can be restricted by private contractual agreements such as shareholder agreements. Shareholder agreements, however, are only enforceable between the parties to the agreement and cannot be enforced against a third party or the company. The TSD has implemented Delivery versus Payment (DvP) in the clearing and settlement system in order to reduce risks to its clearing house's arm, which acts as a

¹⁵ SEC revenue in 2004 was Baht 673 million.

¹⁶ From 1999 to 2005, the minimum fine imposed is Baht 2,500 for non-reporting of shareholding, and the maximum fine is Baht 6,318,000 for non-reporting of series of share acquisitions.

	<p>guarantor of the system; boosts confidence in the system; enhances liquidity in the market, as well as supports cross-border trading and settlement cycle shortening in the future.¹⁷</p>
(3) Obtain relevant and material company information on a timely and regular basis	<p>Under the PCA, shareholders are entitled to examine and request copies of the minutes of the meetings of shareholders and directors, shareholders register and relevant correspondence, and the financial statements and auditor's report which are kept at the company, for a minimum fee. According to market observers, in practice, shareholders are rarely aware of their rights to obtain information from the company.</p>
(4) Participate and vote in general shareholder meetings	<p>All shareholders are entitled to attend and vote at all general meetings of shareholders. All ordinary shares of a public limited company are required by law to be issued on a one-share-one-vote basis. Preferred shares may have less than, but not more than, one vote per share.</p> <p>The PCA provides that if a shareholder is illegitimately denied attendance or the right to vote at any general meeting, or the meeting was called or a resolution was passed in contravention of the articles of association of the company or the PCA, shareholders constituting one-fifth of the total issued shares of the company, or at least five shareholders, may put forth a motion to the court within one month following the date of resolution to have the latter revoked.</p>
(5) Elect and remove board members	<p>The general meeting of shareholders elects and removes board members.</p> <p>Cumulative voting for the election of directors can be provided for in a company's articles of association; however, few companies have done so.¹⁸ The PCA requires that the terms of the members of the Board of Directors be staggered, with one-third re-elected each year. In practice, at the AGM the Board of Directors often submits to the shareholders a list of directors that it endorses. The large shareholders usually know the identities and often influence the selection of the nominees. The small shareholders often vote as the Board recommends or along with the large shareholders. The result is often that the retired directors are re-elected.</p> <p>The general meeting of shareholders is empowered to remove any incumbent board member provided that a resolution is passed with the support of not less than three-quarter of the shareholders present and voting at the meeting and these shareholders represent no less than one-half of the total votes computed at the meeting. In practice, shareholders opposed to the removal can and do create difficulties for those seeking to remove the director, by transferring some of their shares to outsiders so that the three-quarter majority in the number of shareholders cannot be reached by those seeking the removal.</p> <p>The registry system of listed company directors recently introduced by the SEC is expected to enhance the monitoring of company directors since those who commit corporate wrongdoings will be disqualified without any need for the shareholders to remove them.</p>
(6) Share in profits of the corporation	<p>Shareholders are entitled to share in dividends proportionally to their shareholdings, provided that dividends can only be paid out of the company's profits. If the company has accumulated losses, or its retained earnings are not positive, no dividend is payable. Dividends are paid upon approval by the AGM, except that interim dividends may be paid with the approval of the board of directors if permitted by the company's articles of association. In practice, dividend payments and the amount thereof are proposed by management as part of the agenda of the AGM, and usually get the affirmative vote of the shareholders. The law does not allow shareholders to force the board to declare dividend. However, in case the board proposes dividend payments to the shareholder and the approval from shareholder has been obtained, the board will be required by such resolution to pay dividend.</p>
<p>Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:</p>	

¹⁷ As the clearing house, the TSD has used electronic fund transfers through the settlement banks and the Bahtnet system of the BOT. For the settlement of securities, to deliver securities, the maintenance of valid securities in the depository account in the amount sufficient for securities clearing and settlement is required to be made available by 1:30 p.m. on the third day following the trading day (T+3). To receive securities, the securities will be made available in the securities depository account at 1:30 p.m. on T+3, and can be withdrawn or transferred after 2:15 p.m. of the same day.

¹⁸ It is believed that 99 percent of companies have opted out through the Articles of Association. The rate of opting out was xxx in Korea in 2003.

Assessment: Partially Observed	
(1) Amendments to statutes, or articles of incorporation or similar governing company documents	Amendments to the company's memorandum and articles of association require the approval of at least 75% of all the total votes of shareholders attending the relevant shareholder meeting and eligible to vote. ¹⁹ Under the PCA, companies are required to give notice of meetings to all shareholders at least seven days in advance. This may be considered to be too short; a 30-day notice is considered good practice. In addition, sufficient information in connection with the amendments shall be furnished in the relevant agenda to assure that shareholders can formulate their voting decisions on an informed basis. The proposed amendment to the PCA would reduce the threshold required for shareholders to convene a shareholders meeting to 10% of the total votes of shareholders.
(2) Authorization of additional shares	Issuing share capital. Thai law distinguishes between authorized and issued share capital. Capital increases, according to the PCA, require the approval of at least 75% of the total votes of shareholders at the meeting. In addition to safeguarding shareholders from unfair dilution, an SEC rule requires that if the new shares are offered to specific persons with offered price below 90% of market price, there must be no veto votes of 10% or more of shares. Pre-emptive rights. Shareholders have preemptive rights, which may be waived, upon the shareholder resolution, on a case-by-case basis.
(3) Extraordinary transactions, including sales of major corporate assets	Sale of major corporate assets. Transactions resulting in the sale or transfer of 50% or more of a company's material assets or business or that result in a "backdoor" listing require the approval of at least 75% of the total votes of shareholders at the meeting. Other major transactions that result in the sale or transfer of less than 50% of a company's assets require only disclosure to the SET and notification to the shareholders. Major transactions require financial advisor opinions to be included in meeting agendas.
Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:	
Assessment: Largely observed	
(1) Sufficient and timely information on date, location, agenda, and issues to be decided at the general meeting	Meeting deadline. The board is to call the AGM within 4 months of the end of the fiscal year. If not, shareholders representing 20% of total votes or 25 shareholders holding 10% of total votes may ask the company to set up the meeting. Meeting Notice. Under the PCA, a company is required to give notice of meetings to shareholders at least seven days prior to the date of meeting. The minimum seven-day requirement provided by the PCA does not seem to be an adequate time for shareholders to plan for attendance and determine the proposed matters. In practice, shareholders are informed of the date of the meeting at the time the listed companies announce the closing of the shares registrations (XM). The XM date normally falls between 7 to 21 days prior to the date of the meeting. The proposed amendments to the SEA also deal with the extension of notice period. Information available. The notice must contain information regarding the date, location, agenda and issues to be decided at the meeting. Quorum rules. Under the PCA, quorum requirements for a shareholders meeting require attendance of at least 25 shareholders, or at least one-half of all shareholders holding shares, in aggregate, or at least one-third of all shares sold.
(2) Opportunity to ask the board questions at the general meeting	Questions. Although the PCA does not expressly deal with the rights of the shareholders to ask questions at the AGM, according to market practitioners, in practice, such rights are normally respected by the management and board. ²⁰ Retail shareholders tend to be more

¹⁹ Amendments of AOA requires shareholders vote, which could be made either at the EGM or AGM as long as the said threshold is met. In general, requirements on notice of meeting and information in the agenda for EGM and AGM are the same. The key difference, however, is that AGM is required, while EGM is to be convened by BOD either by their initiative or upon request of shareholders.

²⁰ According to the Corporate Governance Report of Thai Listed Companies conducted by the Thai IOD in the year 2003 ("CG Report 2003"), virtually all companies gave shareholders an opportunity to ask questions at the AGM, and a very large number (92%) of companies recorded shareholder Q&As in the minutes of the meetings. The shareholders' right to place items on the agenda of the general meeting of shareholders is, however, a problematic area.

	<p>aggressive in asking questions from the board members or executives.</p> <p>Forcing items on the agenda. Shareholders may propose that the meeting decide on additional items not on the original agenda proposed by the board, provided that the proposal is supported by affirmative votes of not less than one-third of the total issued share capital of the company.²¹ Such a proposal can only be made at the time of the meeting (and not before) after all original agenda items have been fully resolved. In practice, a typical AGM agenda concludes with “other business, if any,” and often shareholders propose issues to be discussed or make additional inquiries at this time. The board normally allows the additional business items to be discussed during this phase of the AGM.</p> <p>The proposed amendment to the SEA would entitle shareholders representing 5% of the total issued share capital of the company to request that the board add matters proposed by them to the agenda of the meeting, provided such request is submitted, in the case of the annual general meeting, within 70 days following the end of the fiscal year, and, in the case of an extraordinary general meeting, within 14 days following the date of the board’s approval to convene the meeting. Should the company fail to do as requested, it would be required to give detailed reasons in the notice of meeting, and the shareholders would still have the right to have their items added into the agenda of the next meeting, upon their majority vote. In addition, the amendment also proposes that the SEC be empowered to designate type or details of the notice of meeting and timing of its delivery.</p>
(3) Effective shareholder participation in key governance decisions including board and key executive remuneration policy	<p>The PCA recognizes the rights of shareholders to participate in material corporate actions by requiring that such actions be approved in advance by shareholder meetings. These actions include increases and decreases of capital as well as transactions resulting in transfer of material assets or business of the company to another other party.²² The SET regulations require related transactions to be approved by the shareholders upon super majority resolution. Furthermore, SEC’s regulations on ESOP, shares offering at below market price, and delisting of securities provide shareholders with 5% or 10% veto rights.</p>
(4) Ability to vote both in person or in absentia	<p>Proxy regulation. Under the PCA, a shareholder may appoint any person to vote on his/her behalf at a general meeting of shareholders.²³ The Ministry of Commerce has regulated the format of proxy solicitation. At present both the PCA and the SEA are silent in this regard. However, the proposed SEA amendment addresses this matter by requiring that any person soliciting a proxy has to comply with the relevant regulations to be adopted by the SEC.</p>
<p>Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.</p>	
<p>Assessment: Largely Observed</p>	
<p>Classes of shares. Only ordinary shares which carry one vote per share and preferred shares in which carry less than one vote per share can be issued. Preferred shares can be issued only if permitted under company’s article of association.</p> <p>Ownership disclosure by companies and shareholders. Many Thai listed companies have their origin in family-owned businesses. Therefore, shareholding and management of listed companies are often concentrated in the hands of family members or of a single group of major shareholders. Companies issuing securities for sale to the public are required by the SEC to provide in their prospectus: (i) a list of the top ten shareholders together with their latest shareholdings; and (ii) a list of individuals or parties who materially have a controlling power over the management policy or operation of the company.</p> <p>The SEC regulations also require that the above mentioned shareholders disclose the identities of the ultimate beneficial owners. This information must also be included in the Annual Registration Form and the Annual Report (Form 56-1) that the company has to submit to the SEC and the shareholders, respectively. Companies issuing securities for sale are also required to disclose their shareholding structure, including the various classes of shares, as well as that of their subsidiaries, and associated companies. Cross-shareholdings among the company itself, its major shareholders, its subsidiaries, and its associated companies are prohibited.</p> <p>Disclosure of shareholder agreements. The disclosure of shareholder agreements in the annual reports is required, including in a tender offer situation, when the shareholder agreement contains clauses restricting the transfer of shares to the winning bidder.</p>	

²¹ Section 105 of the PCA.

²² Sections 107, 136, and 139 of the PCA.

²³ Section 101 of the PCA.

Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.	
Assessment: Partially Observed	
(1) Transparent and fair rules and procedures governing acquisition of corporate control	<p>Basic description of market for corporate control. In a concentrated ownership environment, the application of this principle is always a challenge. The acquisition of corporate control can in practice only be made through a friendly negotiated deal.</p> <p>Tender rules/ mandatory bid rules. The SEC tender offer rule provides for mandatory takeover by requiring any person who acquires shares triggering the 25%, 50% or 75% trigger point to tender for all shares of the company. The rule also provides for the chain principle concept to protect minor shareholders more effectively. The concept of acting in concert has already been introduced and will be strengthened in amended SEA.</p> <p>Delisting/ going private transactions. Under the SET rule, delisting takes place under two scenarios: 1) Voluntarily by the listed company itself, and 2) by law, where there are grounds for delisting. There are 11 grounds for delisting. The SET must give the company which it is proposing to delist an opportunity to explain and remedy the problem. If the company fails to remedy, it will be de-listed accordingly.</p> <p>Squeeze out provisions: N/A.</p> <p>Buy-backs/ treasury shares. Under the PCA, a public company may hold treasury stocks under given scenario provided such treasury stocks must be re-sold out of the company accordingly within the given time. The MOC in this regard regulates details of the purchase and sale of treasury stock. It is also provided that companies may not issue new shares if they fail to sell out treasury stock.</p>
(2) Anti-take-over devices	Currently, hostile takeovers are extremely difficult in Thailand due to the ownership structure. Consequently there are limited incentives for managers and owners to set up anti-takeover devices. Nevertheless, only in a few cases, “golden parachutes” have been issued to senior managers. Although staggered boards are the norm, the PCA does not prohibit the whole board from being removed at once.
Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.	
Assessment: Largely Observed	
(1) Disclosure of corporate governance and voting policies by institutional investors	<p>General obligation to vote/disclosure of voting record. The SEC requires investment companies, or asset management companies, as representatives of mutual funds, provident funds, and private funds, to: (i) write down their policies regarding the exercise of ownership rights including voting rights in their portfolio companies; (ii) attend and vote at shareholders’ meetings of portfolio companies on important agenda items, such as the acquisition and disposal of assets, takeovers, mergers, election of directors, and conflicts of interest with major shareholders and other related parties; and (iii) disclose their voting guidelines for the investors’ review. With respect to the right to vote, the concept of closing the share register helps to identify shareholders who are lawfully eligible to vote.</p> <p>There is a requirement that Asset Management Companies acting on fiduciary duty to disclose their voting records on their website as well as on an ex-post basis. This requirement needs to be extended to all institutional investors.</p>
(2) Disclosure of management of material conflicts of interest by institutional investors	The SEC rule requires asset management companies to disclose their policies for managing material conflicts of interest.
Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.	
Assessment: Largely Observed	
Rules on communication among minority shareholders. There are no specific rules relating to communication among shareholders, other than the rules governing unfair trade practices. While there are no rules barring such communications,	

discussion among shareholders are encouraged. For example, the Institutional Investor Club (established in 2002) and the Thai Investor Association are providing the discussion forums and facilitate cooperation among group of investors.²⁴

Proxy solicitation or other formalities required. The Ministry of Commerce issued a Notification pursuant to the PCA, which requires that a public limited company use proxy material in the forms specified there under. Companies are also encouraged to send proxy materials to shareholders along with the notice calling for shareholders meeting. Existing laws do not specifically address proxy solicitation, but it is expected that the amendment to the SEA or the PCA would include such provisions to legalize and materialize the proxy solicitation, and draw shareholders' attention to participate in the shareholders meeting

SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IIIA: All shareholders of the same series of a class should be treated equally.

Assessment: Partially Observed

(1) Equality, fairness, and disclosure of rights within and between share classes

Availability of share classes information. Under the PCA, the rights attached to all classes of shares must be specified in the company's articles of association, and the investors can obtain the most recently updated version of the articles of association from the Ministry of Commerce.

Equal rights within classes. Under the PCA, all ordinary shares are to be equally denominated and entitled to one vote per share. The articles of association of a company may provide for preferred shares, which may be given less than one vote per share.²⁵

Approval by the negatively impacted classes of changes in the voting rights. The PCA provides that the rights of preferred shares may not be modified, e.g. conversion of preferred shares into ordinary shares, unless it is specified in the articles of association. Other share classes that may be negatively impacted by a proposed action or that have a special interest in a matter are not eligible to vote on such a matter, including voting on a modification of their rights.

(2) Minority protection from controlling shareholder abuse; minority redress

Ability to call a meeting. A general meeting may be called by shareholders representing at least 1/5 of share capital or by 25 shareholders holding at least 10% of share capital. However, under the revised PCA, shareholders holding only 5% of share capital will be able to call a meeting.

Ability to inspect books. Shareholders owning 1/5 of share capital or at least 1/3 of shareholders may ask the company's registrar to appoint an inspector to examine the company's books if they suspect irregularities.

Withdrawal rights. Withdrawal rights are provided under the PCA where the meeting is called or a resolution is obtained in violation of the company's articles of association or of the PCA, provided a minimum number of shareholders petition to the court for revocation of such resolution.

Ability to challenge shareholder resolution. Any shareholder may petition the court to revoke a resolution already passed or proposed on the grounds that it is in contravention of the law or the company's articles of association. Such contravention might take the form of an illegal conflict of interest or self-dealing on the part of the controlling shareholder.²⁶ In addition, if the controlling shareholders' votes or actions are proved to intentionally or recklessly aim to harm to minority shareholders, the minority shareholders can claim damages from them based on the "tort" legal principle.²⁷

Power to postpone an AGM. The PCA does not provide shareholders with the power to postpone an AGM. The AGM, however, can be postponed when the quorum fails to form.²⁸

²⁴ The Government Pension Fund, the Association of Investment Management Companies, the SET, the Social Securities office, the Thai Life Insurance Association, and the Association of the Provident Fund have been the founders of the Institutional Investor Club.

²⁵ Sections 30 and 102 of the PCA.

²⁶ Sections 33 and 102 of the PCA.

²⁷ Section 420 of the Thai Civil and Commercial Code.

²⁸ Section 103 of the PCA.

	<p>Court redress. The legal redress provided to shareholders under the PCA and the SEA focuses mainly on abuses by the board and management. According to the PCA and the SEA, shareholders have the right to monitor the performance of directors and, under certain conditions, to request the Ministry of Commerce, as the company registrar, to appoint an inspector to examine the company's business operations and financial condition or the conduct of the board and management.</p> <p>In practice, shareholders rarely initiate derivative lawsuits. One reason for the scarcity of such lawsuits is that the current PCA is not clear about who is responsible for the expenses when the company wins or loses the case. However, this issue is included in the revised PCA and SEA. In addition, the law does not recognize class actions by shareholders.</p> <p>A draft law, the Class Action Act, has been proposed which would enable shareholders and investors to sue directors, managers, auditors and relevant parties for breach of their duties more easily and with much less concern about the costs. However, it may take some time before this law is enacted.</p> <p>Cumulative voting has been introduced in the PCA to protect minority shareholders from controlling shareholder abuse. Such a mechanism, however, is seldom used by listed companies as the straightforward non-cumulative election mechanism is also allowed by the PCA. The latter turns out to be the normal practice.</p> <p>Regulator redress. The SEC has imposed and collected more than baht 25 million fines over the past three years. The bulk of these fines were imposed because of non-compliance with regulations governing the securities business, unfair securities trading practices, and failure to submit disclosure documents within the time limit.</p>
(3) Voting by custodians and nominees.	The SEC regulates custodian only when the service is performed by securities company. On exercising of voting rights, the PCA's proxy statement facilitates the custodian to split vote depending on the beneficiary owner.
(4) Obstacles to cross border voting should be eliminated.	A foreign shareholder is entitled to the same rights as local shareholders, including the right to attend and vote at general meetings of shareholders in person or by proxy. For foreign shareholders, there is no requirement that a proxy be notarized under the law. The concept that proxy-voting procedures should facilitate rather than obstruct proxy voting by shareholders has been strongly upheld. The PCA currently does not provide extra time to deal with cross border proxy. However, the proposed amendment to the SEA authorizes that the SEC determine the type or details of the notice, and the time required for notice to be delivered in advance. ²⁹
(5) Equitable treatment of all shareholders at general meetings	All shareholders are entitled to attend and vote at general meetings. Each ordinary share entitles its holder to one vote. Thus, the votes of shareholders will be proportionate to their shareholdings.
Principle IIIB: Insider trading and abusive self-dealing should be prohibited.	
Assessment: Largely observed	
<p>Basic insider trading rules. An insider under the SEA is a person who, from the conduct of his/her duties, gains possession of "inside information" which is defined as material information belonging to the listed company prior to its public release.³⁰ Therefore, such an insider, includes controlling shareholder, a director, an officer or employee as well as outside persons such as attorneys, auditors, investment bankers, consultants or independent contractors who are involved in the transactions. Relatives of the aforementioned persons, (e.g., husbands, wives, siblings), persons controlled by the insiders, and other tippees can be included only when there is enough evidence to establish that they acted as a nominee for the "insider" or were induced to deal in the securities for the benefit of the "insider".³¹ Insider trading is in contravention to the SEA and a person is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding 2 times the benefit received or should have been received with a minimum of 500,000 baht.³²</p> <p>Insider trading/self dealing disclosure. The PCA provides that the purchase or sale of assets, or the undertaking of any business with the company by the directors themselves or other persons on their behalf, shall not bind the company, unless</p>	

²⁹ The SEA amendment proposed by the SEC.

³⁰ Section 241 of the SEA.

³¹ Section 258 of the SEA.

³² Section 241 and 296 of the SEA.

such undertaking has been approved by the board of directors. In addition, directors are required to, without delay, inform the company where they (i) directly or indirectly, have an interest in any agreement entered into by the company within the fiscal year; details of the agreement(s) including their interest must be provided; and, (ii) hold, purchased on sold shares or debentures in the company and its subsidiaries during the fiscal year; information on the total shares or debentures held, purchase or sold must be provided.³³

The SEC takes an active role in reviewing transactions involving potential self-dealing as well as major acquisitions and sales of assets. There have been occurrences where the SEC deemed a proposed transaction unreasonable or unjustifiable. In such circumstances, the SEC's first course of action is to try to persuade company management to drop it. If the transaction is not dropped, the SEC may, with advice from the Working Group on Accounting and Corporate Governance, issue a warning to investors. In addition, the management of the company may be recommended for blacklisting from the Director Registry.

Criminal/civil/administrative penalties. Trading in listed securities based upon material non-public information is prohibited, and constitutes a criminal act under the SEA (1992). The purchase or sale, offer to purchase or sell, or solicitation of the purchase, sale or offer of listed securities, directly or indirectly, based on material non-public information, falls under the provisions of the SEA (1992) regarding insider trading, and any person carrying such activity, may be liable for criminal prosecution.

The SET issues rules requiring disclosure of related party transactions. The rules cover deals that may generate conflicts of interest or involve controlling shareholder. Shareholder approval is required in certain cases when the size of the transaction exceeds the threshold.

Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment: Largely observed

RPT approval rules/rules for approval of board/AGM. The SET rule on related transactions specifies the compliance requirements for listed companies including the need for proper disclosure and shareholders' approval (see IIIB). Directors are prohibited from engaging personally into business activities that are the same as or compete with the company³⁴.

Conflicts of interest rules and use of business opportunities. Under the PCA managers and directors must not use business opportunities belonging to the company for their personal advantage.³⁵

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Largely observed

At present, the Thai corporate governance framework is focused principally, if not solely, on protecting and promoting the rights of shareholders. The PCA and the SEA also address concerns of other stakeholders.³⁶ In addition, several sets of laws address the rights of a broad range of stakeholders, including employees, debtors-creditors, and the environment. The relationship between creditor-debtor is subject to the Thai Civil and Commercial Code and the Bankruptcy Act. Employee protection is ensured through the labor laws. In practice, such laws cannot be easily violated. In addition, an SEC regulation on the issuance of securities requires that a company issuing shares for sale to the public has to undertake an environment impact assessment to ensure that the business of the company will not negatively affect the environment.

Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Largely observed

Redress mechanisms available to stakeholders. Stakeholders whose legal interests are violated can initiate a lawsuit in the appropriate court, the civil courts or the specialized courts (i.e. Tax Court, Intellectual Property and International Trade

³³ Section 88 of the PCA.

³⁴ Section 86 of the PCA.

³⁵ Section 86 of the PCA.

³⁶ An example is creditors' right to object decrease in registered capital and business amalgamation under the PCA.

Court, the Central Bankruptcy Court and the Central Labor Court) to seek redress. The specialized courts were established to deal specifically with cases of a special nature such as the Central Bankruptcy Court, which deals with bankruptcy and business reorganization cases, and the Central Labor Court, which deals with employment cases, etc.

Principle IVC. Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Largely Observed

ESOP plans. The most common performance-enhancing mechanism for employee participation is the employee stock and option plan (ESOP) that enables employees to purchase shares in the company they work for and to benefit from the growth of the company through dividends or capital gains from selling shares in the stock market. The ESOP is permitted and regulated by the SEC. Several listed companies in Thailand use an ESOP both to reward employees and to provide incentives to encourage them to work for the growth of the company. The ESOP rule requires disclosure of names of directors, and staff (only which 5% or more shares have been granted), and the dilution effects. Approval from shareholders holding $\frac{3}{4}$ of share capital must be obtained with 10% veto in normal cases.

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Assessment: Largely observed

Under the current legal framework stakeholders do not participate in the corporate governance of the company. However, the PCA allows any person, whether a shareholder or not, to have access to the registered information and other information filed with the company registrar at the Ministry of Commerce, including financial statements. In addition, disclosures required to be made by listed companies can be accessed on a timely and regular basis on the websites of the SET. The SEC has established means for companies to submit and disseminate their registration statements in electronic form through the SEC's website. This will facilitate easy access of information at virtually no cost.

Annual Report discloses economic and financial prospects. The annual report contains information on the economic and financial prospects of the company.³⁷

Annual report discloses significant fact on employees. Beyond the general discussion of the company and the total number of employees in the prospectus and the quarterly reports, there is no provision for filing employee information.

Information is timely and regular. Economic and financial information on the company are published quarterly and annually. However, such disclosure does not include social and environmental indicators or information regarding employees and corporate citizenship.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Assessment: Partially Observed

The main pieces of legislation for the protection of employees are the Labor Protection Act, B.E. 2541 (1998), and the Labor Relation Act, B.E. 2518 (1975), as amended. The SET has issued guidelines and encourages listed companies to put in place a code of ethics and a code of conduct. However, at present, neither the legislative framework, nor the SET guidelines, include provisions related to the protection of whistle blowers.³⁸ In traditional societies, however, with ingrained respect for authority, whistle blowing is considered out of character and difficult to achieve.

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Observed

Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. In the case of bankruptcy, the receiver manages the assets of the corporation. In the case of business rehabilitation, a receiver, plan preparer or plan administrator carries out the corporation's business under the corporation's business rehabilitation plan, which the creditors have the right to review and vote on. The matters of collateral and enforcement are also addressed in Thai bankruptcy law.

In practice, however, there have been a few instances in which the authorities appear to have intervened in a manner not entirely consistent with the spirit of the law.

³⁷ Section 56 of the SEA.

³⁸ Only Section 62 of the SEA states that the responsibility of auditors is to report and disclose material facts concerning inaccurate financial reports.

SECTION V: DISCLOSURE AND TRANSPARENCY

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Principle VA: Disclosure should include, but not be limited to, material information on:

Assessment: Largely observed

(1) Financial and operating results of the company	<p>Annual and quarterly reports. Under the PCA, a company's financial statements must be approved by the annual general meeting of shareholders, and audited by a certified external auditor prior to such approval. If a listed company has a subsidiary, it is required by the SEC to file consolidated financial statements that must be audited as well. The audited financial statements and the annual report, which includes a management discussion and analysis, are to be delivered to the shareholders, along with the notice of the annual general meeting of shareholders. These reports are also required to be submitted to the Ministry of Commerce, and available to the public. In addition to the PCA's requirements, listed companies are required to submit to both the SET and the SEC a quarterly financial statement reviewed by the company's external auditor. Pursuant to a recent SEC regulation, the CEOs and CFOs of listed companies are required to certify the company's financial statements. These financial statements, once delivered to the SEC and the SET, are made available for public access.³⁹</p> <p>In addition, timely disclosure is also required upon occurrence of events that may have a material effect on the company, provided such disclosure shall be made before or after the trading session of the SET. Disclosures made during a trading session would result in the SET's immediate order for halt. Failure to comply with these requirements may lead to regulatory sanctions, including delisting.</p>
(2) Company objectives	<p>Other than the legal objectives of the company as stated in its memorandum of association (which is registered with the Ministry of Commerce and is therefore public), listed companies are required to provide discussions about their business operations in the annual registration form to be filed with the SEC on an annual basis and the annual report to be delivered to shareholders. Both the annual registration form and the annual report are fully accessible to the public on the SEC and the SET websites, and the company websites in some cases. Other information, e.g. business ethics, environmental issues and other public policy commitments, is currently not required for disclosure. However, companies tend to disclose such information more actively.</p>
(3) Major share ownership and voting rights	<p>Companies are required to submit to the company registrar at the Ministry of Commerce on an annual basis a list of their shareholders. This information is available to the public. Companies issuing securities for sale to the public are required by the SEC to provide: (i) a list of the top ten shareholders together with their latest shareholdings; and (ii) a list of individuals or parties who materially have a controlling power over the management policy or operation of the company.</p> <p>The SEC regulations also require that the abovementioned shareholders disclose the identities of the ultimate beneficial owners. The same information must also be included in the annual registration form and the annual report that the company has to submit to the SEC and the shareholders, respectively. The register of shareholders of listed companies maintained by TSD or other person acting as registrar is, however, more up-to-date. The company registrar may deny access to any person other than the company itself. The information appearing in the register does not reflect actual ownership of the shares that are traded in scripless form on an ongoing basis since these have all been registered in the name of TSD. Shareholders in some cases hold shares through their professional custodians or individuals who act as their nominees. The SEC regulations require disclosure of the ultimate beneficial owners. However, if such disclosure is not made by the nominees themselves, it may not be possible for the company or the authorities to identify who is holding shares as a nominee of others.</p>
(4) Remuneration policy for board and key executives,	<p>The remuneration of the board members is proposed by the board and approved by shareholders at the AGM. In practice, the remuneration is set as a total lump sum for the</p>

³⁹ Section 56 of the SEA.

and information about directors	<p>whole board. According to law, the board is empowered to set remuneration of executives unless otherwise provided in the company's articles of association. Companies which plan to make IPOs and listed companies are required to disclose the remuneration of individual directors and disclose the total remuneration of key executives. The details shall include both the remuneration in cash and in kind.</p> <p>In addition, directors and top executives are required to disclose information about qualification, shareholding portion in the company, family relationship among executives, and current positions in other companies. Currently there is no limitation on directors' membership in other boards; however, their positions in other companies must be disclosed in the annual registration statement and annual report.</p>
(5) Related party transactions	The SET rules regarding related party transactions apply to a variety of transactions involving related parties of a listed company. "Related party" is broadly defined to include persons who could be deemed to create conflict of interest issues. In dealing with a related party transaction, the listed company must comply strictly with the procedures specified by the SET rules which require, among other things, full disclosure and, in certain cases, approval of the general meeting of shareholders. (See section IIIB).
(6) Foreseeable risk factors	The PCA is silent on risk factors. The SEC and the SET require companies issuing shares to the public and listed companies to have an internal audit team set up to monitor foreseeable risks. ⁴⁰ In addition, in offering shares in an IPO, companies are required to disclose the risk factors in the registration statement and prospectus, to ensure that investors are fully informed before making a decision to buy the companies' shares. A company's annual registration form and its annual report also must contain a risk factors section.
(7) Issues regarding employees and other stakeholders	The issues regarding employees and stakeholders are required to be addressed in the annual registration statement and annual report. The number of employees and its breakdown for each production line, the total remuneration for employees (e.g. salary, bonus, contribution to provident fund, etc.) must be described. Where there is a material change in number of employees or a material labor dispute in the last three years, details must be provided. The policy in human resource development must also be provided.
(8) Governance structures and policies	Listed companies are required to disclose the governance structures and policies in the annual registration statement and annual report. The disclosure includes the top ten shareholders, management structure, executive committee, and audit committee. Listed companies must also indicate whether they comply with the SET's 15 Principles of Good Corporate Governance and in those instances where they do not they must provide an explanation.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure

Assessment: Partially Observed

Compliance with IFRS. The Thai Accounting Standards (TAS) have been issued by the ICAAT. These standards differ in some respects from International Financial Reporting Standards (IFRS). At the present, out of 36 TAS, 29 standards are consistent with the IFRS, and 6 are in the drafting process. According to the Accounting Act, B.E. 2543, all Thai companies, including listed companies, must follow TAS. Non-listed companies, however, are exempted from some of the more complicated standards. Regarding non-financial disclosure, the SEC's standards are fully in compliance with the US SEC 10K rule in all respects.⁴¹

Review/enforcement of compliance. The SEC is empowered to and does routinely review the details of information provided in the registration statements, prospectuses, and annual reports. It has on occasion required companies to amend or modify or supplement the details therein. The SEC's Accounting Supervision Department reviews on a random basis the accuracy and sufficiency of disclosure in financial statements. For all IPO cases, the department's staffs interview the auditors and thoroughly examine the audit working papers. In addition, all audited reports are reviewed for non-compliance

⁴⁰ Beginning from 2003, SEC requires listed companies to include in their annual registration statement, a certification by managing director and CFO.

⁴¹ The SEC rules on disclosure in the annual registration statement and annual report complies with US SEC 10K, except for the topic of executives compensation which 10K requires companies to disclose the total amount compensation of each of the top 5 executives while the SEC rules requires to disclose the total amount compensation of top 5.

⁴² Since its establishment in 1992, SEC has suspended seven auditors of listed companies. During the last four years, SEC has instructed more than twenty companies to revise/restate their financial statements.

with TAS, scope limitation by company management, or any irregularities. Depending on the situation, the SEC may order amendments or the re-issuance of the financial statements. Where it appears there was intent to mislead, the case may be referred to the enforcement department for further action.⁴²

Principle VC: An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Assessment: Largely Observed

Who must be audited? A company's financial statements must be audited by law by an external auditor appointed by the shareholders. The audit committee nominates the auditor to the AGM. Shareholders generally vote for the auditor proposed by the management. Auditors must be on the approved list of the SEC. The auditor's remuneration must be disclosed.

Compliance with ISA. ICAAT has issued "Auditor's Guidelines for Communicating with Audit Committee", which are fully consistent with an earlier version of the ISA.⁴³ Audit standards are regulated by the Federation of Accounting Professions (FAPs).

Auditor independence. The SEC requires that auditors, partners, team members, and spouses of the above mentioned people and audit firms are prohibited from investing or being an employee of or director in audit clients.⁴⁴ From FY06 auditors for all listed companies are required to be rotated every 5 years. Non-audit fees paid to auditor and related parties of auditors have to be disclosed.⁴⁵

Audit committee. Audit committee members are required to comply with the qualification, scope of work, and guidelines set by the SET. The Guidelines recommend that the auditor communicates with the audit committee verbally or in writing depending on the seriousness of the issue and agreement between the auditor and the audit committee. Minutes of the meeting shall be kept as evidence of the auditor's working papers.

Requirement for oversight of audit. Since October 2004, the audit profession has been regulated by the Federation of Accounting Professions (FAP), a newly established, independent, self-regulatory organization.⁴⁶ The SEC conducts an in-depth review of audited financial statements of listed companies.⁴⁷ It also monitors the performance of the auditors of listed companies.⁴⁸ Audit working papers of auditors can be reviewed to explore whether the auditor properly complied with auditing standards. The necessary IT system has been put in place in SEC to help detect unusual financial ratios. Through the Accounting and Governance Steering Group, the SEC consults and cooperates with the ICAAT in the Quality Assurance (QA) of audit firms.

Auditor's competency. The ICAAT established a sub-committee to screen the qualifications of audit firms who apply for SEC's approval and set the guidelines for quality assurance of audit firms. All audit firms will be required to validate their system of quality control and discuss the steps they have taken to assure quality work by their auditors, including training courses, client acceptance criteria, work delegation procedures and reviewing methods.

Auditor qualification. The SEC maintains a list of approved external auditors who are authorized to conduct external auditing for listed companies.

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: Largely Observed

Auditor accountability. The SET's rule on audit committee states that it is the responsibility of the audit committee to nominate an external auditor for listed companies. This rule also requires the auditor to report to the board on matters concerning infractions and to the authorities in case the board disregards the issue.

Auditor liability. An external auditor will be legally liable to the company and shareholders for damages suffered by them if, in conducting the audit, it fails to perform its duty with due professional care. Auditors who fail to comply with accounting standards may receive warning or be suspended by the SEC for a period of 6 months, 1 and 2 years and may be liable to

⁴³ Issued in September 2000. The current guidelines, however, are being amended to be fully consistent with the current version of ISA (i.e. ISA260).

⁴⁴ SEC rules prohibits auditors to provide services to clients that may compromise their independence. Some type of non-audit services such as accounting system set up, securities brokerage, and preparing of accounting for the audited client are not allowed even in asset appraisal. In doing asset appraisal, the auditor is strictly required to seek prior approval from the SEC.

⁴⁵ Efforts are underway to make the applicable code of ethics in Thailand consistent with the latest IFAC code of ethics.

⁴⁶ The Accounting Profession Act B.E. 2547 requires all auditors to follow the Code of Ethics issued by FAP. One of the provisions relates to Auditor's independence, which prohibits auditors from providing any services that may impair their independent in audit service. An Accounting Public Oversight Body (APOB) has recently been established to oversee the work of FAP. The APOB is responsible for ensuring that FAP's policies are fair and consistent with the laws and national policies of the country.

⁴⁷ This involves 100 percent review of financial statements over the two year cycle.

⁴⁸ In October 2004, the Civil Court awarded damages of 688 million Baht against the auditor and the audit firm of defunct Thai Financial Trust for improperly certifying financial statements.

imprisonment or a fine or both. In the past 2 years, the SEC has suspended 2 auditors for the period of 6 months and 1 year respectively.

Auditor insurance. Audit firms are required by the Accounting Profession Act B.E. 2547 (2004) to retain collateral fund to insure the liabilities against third parties.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Assessment: Largely observed

Material events. Listed companies are required to provide information on a timely basis. Material or price-sensitive information must be disclosed immediately. In all cases, the information can be obtained free of charge or with minimal fees. (See Principle IVD for additional information.) The SET requires listed companies to immediately disclose to the general public when there are incidents of, for example, merger and acquisition, dividend announcement, change of control, and acquisition of disposition of major assets.

Published information. Information about listed companies, which is required to be made available to shareholders and the public, can be accessed by users on an equal basis through the company's website or the SET's website.⁴⁹

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment: Largely observed

Disclosure of conflicts of interests by analysts, brokers, rating agencies, etc. SEC rules regulate conflicts of interest by analysts and securities companies. For example, analysts are prohibited from trading in the securities they cover for the period of three trading days after the date of published report. SEC rules also require securities companies to closely monitor their staff's stock trading to prevent abuse of inside information. Securities companies are not allowed to trade in shares they are underwriting (during a five-day period prior to the offering until the sell closing date.) The SEC has also set up a committee, comprised of the Securities Analyst Association, the Association of Investment Management Companies, and the Government Pension Fund to assist with supervision of the securities analysts industry. Material conflicts of interest are required to be disclosed. Failure to provide such disclosure is subject to suspension/revocation. In the first half of 2005, SEC has imposed a number of administrative sanctions to enforce its rules.⁵⁰

SECTION VI: THE RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: Partially observed

Basic description of board. Under the PCA, the board of directors shall comprise at least 5 directors, at least half of them domiciled in Thailand. The general requirements on qualification of the directors are promulgated under the PCA. In addition, the SEC also requires that i) the board of directors duly understands its role and responsibilities to shareholders and could ensure its capability to do so, and ii) the board of directors and management structures must sufficiently satisfy the check-and-balance mechanisms. Unless the company's articles of association provide otherwise, the shareholders may elect the directors by means of cumulative votes. The entire board of directors must be replaced annually at the AGM, except as otherwise provided in the articles of association, in which case one-third of the directors must retire by rotation.

A director may be impeached by the votes of at least three-fourths of the shareholders who hold at least half of the shares and who are present at a shareholders' meeting. The PCA also requires that directors strictly observe the PCA, the business objectives and the articles of association, and must avoid doing any business in competition with the company. In addition, unless the articles of association specify otherwise, the board of directors may empower any one or more directors or any person, a power of attorney in undertaking any act on its behalf. In this regard, the SEC also requires that the board of directors determine the definite extent and scope of the power given to such person.⁵¹

⁴⁹ www.set.or.th.

⁵⁰ This includes: Three probations of securities companies executives, five warnings, three probations and nine suspensions of marketing officers, two warnings to analysts, and two warnings and one probation of investments advisors.

⁵¹ Such empowering must be clearly made in writing or recorded in the minutes of the Board of Directors meeting.

<p>Size requirements and typical size. Under the PCA the board of directors is required to be comprised of at least 5 directors. The typical board size is 8-12 members.</p> <p>Eligibility requirements. In addition to the general qualification requirements under the PCA, the SEC requires that directors of the companies that plan to make IPOs must be listed in the SEC Director Registration System. The SET also requires the same of directors of listed companies. In addition, the SEC and SET also require that a board of directors include at least 3 independent directors, and the members of the audit committee. Each member of the audit committee must also be an independent director and must have sufficient knowledge and experience in reviewing financial reports.</p>	
<p>Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.</p>	
<p>Assessment: Largely observed</p>	
<p>Adequacy of duties of loyalty and care. Under the PCA, the board of directors is authorized and responsible for the management of a company in accordance with the company's objectives, articles of association and resolutions of shareholders' meetings, in good faith and with due care for the company's interests.</p> <p>The concept of fiduciary duties, duty of care and duty of loyalty, are the core concepts of the PCA. In general, directors are jointly and severally liable for any damage to the company where breach of duty exists. In practice, however, there have been several incidents that indicate that the board of directors may not fully understand their roles and responsibilities as required by law. Directors of listed companies in Thailand are generally well educated. A majority of them, however, perform their directors' roles on a part-time basis.</p> <p>Recently, the SEC has implemented a system of director registration to examine and monitor listed company directors more closely and stringently, to ensure their proper business behavior and shareholder protection.⁵² In cases where the registration statement and prospectus contain false statements or fail to disclose material facts that should have been stated therein, the directors shall be jointly liable with the company which offers securities to the public. Such liability for damages shall be equivalent to the difference between the amount to be paid for the securities and the price which should have been paid. Pursuant to the PCA, the directors shall be jointly liable for any damage to the shareholders for the preparation of false financial statements, minutes of shareholders meeting or minutes of the board of directors.</p> <p>According to law, shareholders of the same class shall have the same legal rights. Even with all the regulations and measures recently promulgated or introduced by the SEC and the SET, where board decisions may affect different shareholder groups differently, the principle of good corporate governance directs the board to treat all shareholders fairly. In practice, this may not be the case in some listed companies where the board is under undue influence from major shareholders.</p> <p>Insurance for directors. There is no requirement for directors' insurance.</p> <p>Business judgment rules. Directors should employ the care and diligence that an industrious and honest person employs in the administration of his/her own affairs. They are not liable for actions taken in the normal course of business. They are however, liable when acting negligently, fraudulently or in breach of existing laws or by-laws. The revised SEA provides clarification on roles and fiduciary responsibilities of directors and executives of listed companies as well as their subsidiaries.</p>	
<p>Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.</p>	
<p>Assessment: Partially observed</p>	
<p>The corporate law of Thailand does not specifically address these issues. In recent years, the issues of ethics and interest of stakeholders have been widely discussed in the business community and are also subjects in the directors' handbook. There is an increasing awareness that in addition to shareholders and other public investors, the board of directors is also accountable to the company's employees, its customers, creditors, and the relevant governmental agencies.</p> <p>In practice, whether or not this principle is strictly adhered to depends largely on the discretion of the board of each company.</p>	
<p>Principle VID: The board should fulfill certain key functions, including:</p>	
<p>Assessment: Partially observed</p>	
<p>(1) Board oversight of general corporate strategy and major</p>	<p>The PCA does not establish specific functions of the board. However, the general powers and responsibilities of the board as provided in the PCA are broad enough to encompass</p>

⁵² To assist listed companies directors in discharging their duties in a diligent and honest manner, the SEC has introduced a "Directors Handbook" to serve as a guidance manual.

decisions	all major decisions not subject to shareholders' approval. In practice, major decisions are approved by the board. Although general corporate strategies used to fall within the scope of authority of the management team, such functions are increasingly recognized by listed companies, especially the larger ones, as being subject to board oversight.
(2) Monitoring effectiveness of company governance practices	The general power and responsibilities of the board as provided in the PCA are broad enough to be interpreted to include CG practices. All listed companies are required to set up an audit committee in order to independently monitor compliance with applicable laws. Apart from the role performed by the audit committee, boards of listed companies in general do not particularly perform the task of monitoring CG practices in other areas. In addition, the companies with good corporate governance are awarded prizes and are subject to lower listing fees and registration statement fees. Also, efforts are being made to introduce investment funds specializing in good governance companies.
(3) Selecting/compensating/monitoring/replacing key executives	The PCA does not establish specific functions of the board. However, the general power and responsibilities of the board as provided in the PCA are broad enough to include these functions. In practice, the boards limit their power to merely hiring, discharging and determining the pay of the president or the CEO.
(4) Aligning executive and board pay with long term company and shareholder interests	Executive performances and pay in most listed companies are measured by several key indicators including the short-and long-term value created for the company and its shareholders. Board pay, however, is usually set based on competitive market standards and normally does not take into account any long-term company and shareholder interests.
(5) Transparent board nomination and election process	According to the PCA, board members are nominated and elected by the general meeting of shareholders. In practice, controlling shareholders nominate the directors and approval by the general meeting of shareholders is merely a formality. In larger listed companies, nominating committees are established to oversee the nomination process.
(6) Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs	It is recognized that insider conflicts of interest are to be avoided and there are several regulations which expressly deal with these issues.
(7) Oversight of accounting and financial reporting systems, including independent audit and control systems	The audit committee that reports to the board is responsible for monitoring to ensure that the systems for accounting and financial reporting, including independent audit and control, are adequate. The committee is to provide recommendations to the board if necessary actions need to be taken. ⁵³ The responsibilities of audit committees, however, are not fully consistent with international best practice. ⁵⁴ Beginning in 2003 annual registration statement, the SEC required that the managing directors and the CFO have to certify whether the internal control of the company is adequate and effective. The company shall also disclose information regarding internal controls in an annual report which shall include an opinion of the Board of Directors on the sufficiency and adequacy of the internal control system, and whether it can protect against the inappropriate or unauthorized use of its assets by its management. In the case that the audit committee has a different opinion from the Board of Directors or the auditor has any observation regarding the internal control system, such opinion or observation shall be included in an annual report. Moreover, the company shall also include the report of the Audit Committee with respect to good corporate governance as an attachment to an annual report.
(8) Overseeing disclosure and communications processes	In practice, the management team, not the board, oversees the disclosure and communications process.
Principle VI: The board should be able to exercise objective independent judgment on corporate affairs.	
Assessment: Partially observed	

⁵³ Among these was the highly controversial and scandalous case relating to the defunct Bangkok Bank of Commerce, which was recently adjudicated against the defendants, including Mr. Krirkkiat Jalichandra, the former president of the bank. In another landmark case, the former CEO and senior vice president of a listed company, Seamico Securities Public Company Limited, were convicted and sentenced to imprisonment for corporate fraud.

⁵⁴ An example of good practice is the Sarbanes-Oxley Act of 2002 in the U.S. That requires each annual report of an issuer to contain an "internal control report." Each issuer's auditor needs to attest to and report on the assertion made by the management of the issuer. See Annex b for a comparison of Sarbanes-Oxley Act and the Thailand requirements.

(1) Director independence	<p>Director independence in law. Under the SEC requirement, independent directors must not i) hold more than 5% of all voting shares of the parent company, subsidiaries, associated companies or juristic person that may be in conflict of interest, ii) be an employee, officer, or counsel who receives regular salary or a controlling person of the foregoing entities, iii) be a close relative of the management, a major shareholder, a controlling person, or a person proposed to be management or a controlling person of the company or subsidiaries, and iv) have a business relationship with the company, parent company, subsidiaries, associated companies or juristic person that may be in conflict of interest, in the manner that may disallow its exercise of independent discretion.</p> <p>Director independence in practice. With the requirement of an audit committee, the independence of directors in listed companies has been significantly improved. Nevertheless, in companies where a controlling shareholder also assumes the role of a director and/or senior executive, his/her independence may be doubtful. The controlling shareholder may also exert influence over other directors.</p>
(2) Clear and transparent rules on board committees	<p>Audit committee. Only an audit committee is required for listed companies and companies seeking to offer sale of equity-based securities to the public.⁵⁵</p> <p>Other committees. The establishment of other board committees is currently optional. The rules with respect to the audit committee are sufficiently clear and transparent.</p>
(3) Board commitment to responsibilities	<p>Restrictions on the number of board seats. There is no restriction on the number of board seats one director could occupy. PCA only requires that there must be at least 5 directors on the board. The maximum number is not provided. However, the board of directors and management's board seats in companies that may have conflicts of interest and the subsidiaries should be disclosed.</p> <p>Board meeting requirements. There are no requirements for director attendance at meetings of the board; however, since the attendance records of individual directors is required to be disclosed, directors have an incentive to attend meetings. There seems to be no question about the good intention and dedication of directors of most listed companies in Thailand. However, their commitment to their responsibilities may be affected by the limited time they can devote on a part-time basis. It is also understood that directors have an insufficient understanding of their responsibilities.</p>
<p>Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.</p>	
<p>Assessment: Largely observed</p>	
<p>In practice, information is provided to board members by the management team. The quality and timeliness of such information depends largely on the mutual understanding between the board and the management team as to what is needed. In recent years, such coordination has been significantly improved, especially in larger listed companies. In addition, members of the audit committee are entitled to seek independent professional advice at the company's expense.</p>	

⁵⁵ Audit committee members are required to comply with the qualification, scope of work, and guidelines set by the SET.

Thai Institute of Directors Association (IOD) and its Role in Promoting Good Corporate Governance Practices⁵⁶

The Thai IOD was established in December 1999 with initial financial support from the Stock Exchange of Thailand (SET), the Office of the Securities and Exchange Commission, the Bank of Thailand, and the Foundation for Capital Market Development. A technical assistance grant was also provided by the World Bank.⁵⁷

Since its inception, the Thai IOD has been working to promote professionalism in directorship in Thailand. It offers director certification and professional development courses, provides a variety of seminars, forums and networking events, as well as conducts research on board governance and practices. The IOD's main training courses include the 5 1/2- day Directors Certification Program (DCP), the one-day Directors Accreditation Program (DAP), The Role of the Chairman, and the Audit Committee Program.

At present, SEC strongly recommends that all directors of listed companies complete at least the one-day DAP course. The SET also encourages directors of listed companies to attend the DCP by financing the class fee for the first two years. As of May 2005, approximately, 1,600 company directors have completed the DCP and approximately 2,200 have completed DAP course. In addition, approximately 2,400 directors have attended other extension courses, workshops, and forums, and seminars organized by IOD.

Apart from providing various training programs, the Thai IOD also conducts research and surveys on corporate governance, such as the annual Corporate Governance Report on practices of all listed companies. This report has been recognized by the National Corporate Governance Committee and agencies concerned as the most comprehensive corporate governance study of Thai listed companies to date. Other major surveys include Thai Directors Compensation Survey, which is conducted every other year, and director's opinion survey on the role of audit committee, director independence, board and CEO performance evaluation and etc. The IOD is also the organizer of the bi-annual Board of the Year Awards to recognize top performing board of directors.

⁵⁶ Thailand Economic Monitor, April 2005, the World Bank.

⁵⁷ Through an ASEM grant.

Corporate governance practices vary across international boundaries and between companies. A particular practice reflects a country's legal, regulatory and institutional framework, the quality of their enforcement, as well as generally accepted standards and corporate culture. The corporate governance assessments, carried out by the World Bank Group's Corporate Governance Department under the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC), capture both the formal and informal dimensions of corporate governance practices. Under the ROSC Program, the World Bank oversees the preparation of assessments on corporate governance; accounting and auditing; and insolvency regimes and creditor rights.

The corporate governance ROSC benchmarks the country's observance of corporate governance against the OECD Principles of Corporate Governance. A systematic diagnostic tool, the ROSC:

- uses a consistent methodology for assessing national corporate governance practices;
- provides benchmark indices by which countries can evaluate themselves and gauge progress in corporate governance reforms;
- strengthens the ownership of reform in assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers, and
- Provides the basis for a policy dialogue.

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