Directors' Handbook

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Foreword

At the core of corporate governance is the role of the board of directors in directing and monitoring that management serves the long-term interests of stakeholders, protecting shareholders' assets and ensuring that they receive a decent return on their investment. An active, informed, independent and involved board underlies a company's integrity, transparency and long-term strength. Therefore, it is essential that board members have the skills and knowledge required to conscientiously discharge their responsibilities and function effectively.

The Directors' Handbook was originally published in Thai by the Securities and Exchange Commission (SEC), and subsequently translated by The Stock Exchange of Thailand (SET). It is a quick reference tool for both new and experienced directors of SET-listed companies, providing them with the requisite information on procedures, duties, their responsibilities and liabilities, guidelines for implementing good corporate governance, and an overview of SEC's and SET's rules and regulations.

This publication is the result of the dedication of many people. I would like to thank the Law and Development Research Centre (LDRC), Chulalongkorn University for translating the book and the SEC's Corporate Governance Department for their valuable input; Khun Burin Kantabutra, SET's English Language Advisor, and Mr. Len Barnett and Mr. Christopher Allen for their edits. I believe this handbook will be very useful for board members.

Vijit Supinit
Chairman
The Stock Exchange of Thailand

Director's Handbook

Volume 1

A listed company director

"… Being director of a listed company is an honorable position, crucial for a company's success and prosperity … but carrying immense obligations and responsibilities."

The Thai government established the National Corporate Governance Committee to promote the development of sound corporate governance (CG) across all commercial sectors and organizations. Public company directors, who determine the business directions and policies of their firms, will play a vital role in determining their organizations' CG, increasing investor confidence and, in the long term, creating sustainable capital market growth.

This handbook has been prepared for those serving, or about to serve, as directors of companies listed on The Stock Exchange of Thailand (SET), and, as such, have or will have obligations and responsibilities to their shareholders. The handbook contains general principles guiding the roles, duties and responsibilities of directors and their boards. It provides operational guidelines for implementing good CG, the Public Company Act, the Securities and Exchange Act, and the relevant rules and regulations issued by Securities and Exchange Commission (SEC) and (SET).

The handbook consists of:

Volume 1 **Roles, duties and responsibilities of directors and board of directors**
- principles and practice guidelines for a board.

Volume 2 **Practice guidelines for directors**
- suggestions, guidelines and issues affecting directors' decisions and duties.

Volume 3 **Rights and equitable treatment of shareholders and shareholder meetings**
- fundamental principles for respecting shareholders' rights and practice guidelines for convening shareholder meetings in line with these principles.

Not all guidelines are stipulated by law, but all are nevertheless regarded as good practice. This handbook provides only key principles, not specific details which change over time. Directors need to keep themselves updated on these details to ensure full compliance.

The handbook version in Thai was prepared after being reviewed and amended by a committee consisting of representatives from SET, Listed Company Association (LCA), Board of Trade of Thailand, Thai Institute of Directors (Thai IOD), public firms receiving Board of the Year 2002 Awards from Thai IOD, and invited professionals. SEC is grateful to the committee, and trusts that this handbook will help you, as a director, to undertake your duties with confidence, thereby contributing to the best interests of the company and shareholders.

Director's Handbook

Volume 1

Roles, duties and responsibilities of directors and board of directors

The office of Securities and Exchange Commission

January 2007

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Part 1

General Principles

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Part 1 General Principles

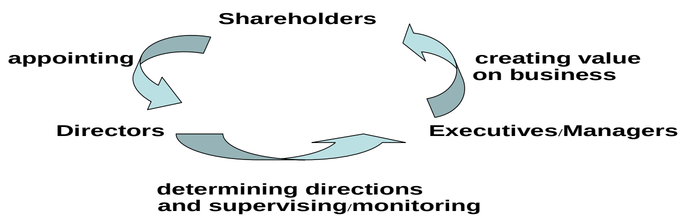
1. General information about directors

It has been said that: *"There are two groups of directors in a listed company. The first consists of (co-)owners, who come in to manage and protect their business. The second consists of those who are invited to attend board meetings and to consider the matters proposed."* Whichever group you are in, you need to be aware of the seriousness of a director's role.

1.1 Directors and their importance

In a small or family business, the owners and managers are essentially the same people, therefore benefits acquired by the managers accrue to the owners, family and business.

But, whenever funds are raised from the public or external investors, a change of business management will inevitably take place. In bigger companies, especially in listed ones, investors and managers have different roles which must be separated, and distinct from the company itself, which forms a separate legal entity. The investors or shareholders do not directly manage the company's business, but appoint "**directors**" as their representatives to supervise the company as a "**board**". The board of directors does not engage in the company's day-to-day management, but appoints professionals to do this.



The Board, as the shareholders' representative, has the duty to supervise and oversee the professional managers to ensure that the company's business and affairs are conducted in the best interests of shareholders. Each director, as a member of the Board, is equally and jointly responsible for this supervision and oversight.

Where shareholders are appointed as either directors or managers, each role needs to be clearly distinguished, so that it is clear where, as a director, they are representing all shareholders, and where, as a shareholder or manager, they are representing other interests.

1.2 Directors and good corporate governance

Good corporate governance (CG) is important because, in most large companies, the owners of funds do not manage the business, and the managers do not own the funds. The term "Good CG" describes company's rules, regulations and mechanisms which ensure the protection of the rights of shareholders (owners of funds), and that management of the company is for the best and long term interests of shareholders. Directors, acting as links between shareholders and management, have an essential role in establishing good CG.

Shareholder confidence is crucial and must be earned. It is given when the company conducts its affairs according to the following principles:

- **Respect for shareholders' rights and equitable treatment**. Fund owners have the right to participate in important decision-making processes (usually by shareholder resolutions); the right to receive returns in full honestly; and the right to fair practice without discrimination, based on the number of shares held, free of influence from major shareholders.

- **Accountability of directors**. Part of your duties and responsibilities is to ensure that the business is conducted in the best interests of the company, and that the structures, composition and working procedures of the board are clear and accountable.

- **Information disclosure and transparency**. The decision-making process within the company and management of the company should be transparent and explainable. You, as a representative of the owners of funds, have the duty to disclose full and accurate information to the owners so that they are able to monitor the company's performance. Transparent decision-making will also attract new investors.

- **Fair treatment of stakeholders**. Although you are a representative of shareholders, fair and ethical treatment of the company's stakeholders, such as employees, customers, suppliers, creditors, and the community, promotes sustainable growth.

2. Conduct of directors

According to the code of business conduct, directors should perform their duties following principles of integrity, transparency and fairness. In addition, some responsibilities of directors are legally enshrined.

The law does not prescribe **what** are the powers and duties of **each director**. Instead, it sets forth the powers and duties of the **board** in general (see details in Part 2). Accordingly, each individual director, as a member of the Board, shares these powers and duties. The law stipulates **how** each individual director should perform his/her duties.

2.1 Legal duties (fiduciary duty)

The Public Company Act stipulates that directors must perform their duties with loyalty and due care toward the firm. Of course, this statement alone does not provide clarity, so understanding the background of the duties of directors will help you appreciate its full meaning.

- **Origin of the duties of directors**

The term “**fiduciary duty**” comes from trust law, which, although not part of Thai law, is essential for understanding a director’s duties.

The word “trust” in this context refers to a group of assets, which the owners may not be able to manage (for example, when engaged in battle, disabled, deceased, etc.). The assets are, therefore, entrusted to someone who will manage them in lieu of the owners. Normally the owners would give guidelines for management and name those (e.g., heirs) to benefit from the assets.

The manager of the assets in this case is called a “**trustee**”, meaning a **person to whom something is entrusted**. A trustee acts on behalf of the legal owner of the assets for the benefit of other persons. Accordingly, a **trustee** must manage the assets with **loyalty and due care for the benefit of those designated by the owners.**

The director’s duties as a ‘trustee’

When applying the principle of fiduciary duties to a company, you, as a director, are similar to a trustee having powers and duties in the management of a group of assets for the interests of others, i.e., the shareholders. The fulfillment of these duties requires loyalty and due care.

Standard of performance

The wording used to describe the necessary performance of directors under the law is very broad. The question is: “what, in discharging these duties, constitutes an adequate standard of performance?”

The law recognizes that directors exercise broad discretion at all times when performing their duties. This is because in many cases, the correctness of an action or decision cannot be determined ex ante. If the directors were personally liable, whenever an action or decision was judged incorrect ex post, then experienced and qualified people would be reluctant to serve as directors. Hence, the law provides protection from personal liability to directors who perform their duties properly, irrespective of the consequences of their actions and decisions.

Although Thai law does not provide guidance concerning a director’s discretion, our existing corporate practices are not different from those found elsewhere. A director is, to some extent, protected from personal liability if:

- Actions are taken in good faith and in the best interests of the company;
- Decision-making is performed with due care;
- Decisions are free of conflicts of interest.

2.2 Duty of care

In order to determine whether a director has performed his duties with due care, the following guidelines are of assistance:

(1) Acting **as a 'reasonable director' would act**;
(2) Acting on an informed basis;
(3) Acting without reasonable doubt regarding the reliability of the information on which the decision is based.

For your own sake, you should, in all board meetings, ensure the availability of sufficient and reliable documents and information necessary for proper decision-making. Before approval of any matters or transactions, you should exercise your right of inquiry at board meetings to ensure you have the required degree of certainty, and are able to justify your decisions. After each board meeting, you should ensure that the minutes are complete, elaborating opinions and justifications in full. These provide evidence that your performance was undertaken with due care.

Sometimes business decisions are made based on insufficient information. Whether the director is liable in such cases depends on the circumstances. For example, postponing a decision and awaiting further information, may jeopardize a company. In such a case, you should adopt the three principles above, and then decide. However, if the matter is not urgent, and you feel uncomfortable, you should exercise your rights to inquire, request additional information, or request a postponement of the decision.

2.3 Duty of loyalty

Fiduciary duty requires a duty of loyalty by directors, which goes beyond simple honesty. The duty of loyalty in this context includes the following:

- Actions with proper purposes.
- Decision-making without conflicts of interest. A director with a conflict of interest requires special approval to participate in the relevant decision-making process. Even then, the director must take into account the best interests of the company.
- Not using information or usurping business opportunities of the company for personal or third party benefit.

A conflict of interest is a case where the best interests of the company clash with, for example, 1) the director's personal interests, 2) the interests of persons related to the director or 3) companies in which directors or persons related to them are major shareholders, directors or have other interests, etc. In such transactions, the so-called "connected transactions", you should exercise a higher degree of duty of care. Participation in these transactions should be subject to a **transparent consideration and decision-making process**, in which the party in conflict should not participate. In addition, approval of participation should be given only if such joining in the decision-making is in the best interests of the company.

Examples of failure to perform with due care

- Selling to or buying from a company in which the director has an interest, and to whom the director grants preferential conditions.

- Using company funds to support a firm owned by the director. This is especially acute if the company from which the funds are taken does not engage in finance, there is a high risk of default, a proper risk analysis is not undertaken, or where there are financial difficulties after lending.

- Purchasing property from a person related to a director, where the property is not necessary for the business of the company.

- Using knowledge, information and corporate opportunities available to a person in his capacity as a director for his own business which competes with the company.

2.4 Areas of responsibility

Some say that "Whenever you take up a directorship, you have already put one leg in jail." Is this true?

The law aims to establish ground rules for the conduct of business in the private sector. The law acknowledges that businesses need good leadership, and so protects directors dutifully performing their duties, while balancing the interests of other parties. Company directors and executives risk penalties only when they act illegally and unaccountably.

Accountability has several aspects as follows:

- **Business related accountabilities**

Shareholders appoint directors who, if they perform their duties effectively, may receive rewards, bonuses, or re-appointment. However, when shareholders are dissatisfied with directors, they may question them, refuse rewards, or remove them from office.

- **Liabilities under civil law**

Under civil law, directors are legally responsible to the company and shareholders.

Legal responsibility to the company. Where the company or shareholders believe that the directors, or executives in charge of managing company assets, have damaged the company, they may sue them on the company's behalf. Furthermore, if directors are found culpable, they can be held personally liable for any damage suffered **by the company**.

Directors are protected to some extent, because they can be sued and held personally liable only under specific circumstances. Action can be taken against them only by the company itself, or by shareholders holding at least 5 % of all shares, and acting for and in the name of the company, and only if such directors fail to perform their duties with "loyalty and due care in the interests of the company", or fail to comply with the laws, articles of association or shareholders' resolutions (e.g., managing beyond the scope of powers, etc.), or enter into any business competing with the company without the prior consent of the shareholders.

Under civil law all directors are jointly and severally liable for all resolutions passed by the board, regardless of what the participation of each director may have been in passing the resolution. However, this liability does not arise, if the director can prove that:

(1) The director is not aware of a conflict of interest (e.g., some directors have their own business in competition with the company, but other directors are not aware of this), or such actions are carried out without board resolutions (e.g., executives were acting beyond their powers as authorized by the board).

(2) The director protests at a meeting and this is recorded in the minutes, or a written protest is submitted to the chairman of the board within 3 days of the meeting.

(3) For matters regarding the company's failure to prepare accounts, records or documents as required by law, the director presents proof of reasonable attempts to prevent such violations.

Before the approval of any transactions, you should consider the information available, and exercise your rights to inquiry at board meetings until you are satisfied and able to answer any later questions. You should ensure that the company maintains complete, accurate and detailed minutes of meetings. Should you not attend a board meeting, you should follow up matters proposed for consideration at the meeting. If you disagree with any of these, you should, for the record, give your opinions in writing to the chairman of the board.

A common question is, whose interest should a director serve if he is not only the director of the firm but also representing a related party, such as a bank? The answer is that whenever you serve as a director of the company, you are to serve the best interests of that organization. Should the firm encounter problems, you as a director are fully responsible to that company. As a director, you are not primarily accountable to the related party which appointed you as its representative.

Legal responsibility to shareholders. This does not include where shareholders sustain losses independently of the extent to which directors perform their duties. The Securities and Exchange Act allows investors to sue for damages from a company and its directors where the firm and/or its directors have provided improper or incomplete information disclosure at public offerings. For disclosure or filing information for other purposes, the Public Company Act imposes duties on directors, who are jointly and severally liable to their shareholders. Therefore, you should ensure that information disclosed by the company is accurate and complete, as legally required.

- **Liabilities under criminal law**. There are three main criminal liabilities:

(1) Actions by the company. When the firm violates the law (e.g., by failure to file relevant reports), the law imposes a penalty. However, if such violations are done with wrongful intention or due to wrongful instruction, the directors or executives in charge may also be punished.

(2) Actions by board. As an example, if the board does not hold a shareholder meeting that should have been held, all directors are jointly liable.

(3) Individual wrongdoings. These are illegal acts by individuals, e.g., fraud, scams, or insider dealings. In such cases, anyone committing an offence can be prosecuted. The punishment for such offences appears in the Public Company Act and the Securities and Exchange Act. Directors and executives of listed public companies are liable to more severe penalties under the Securities and Exchange Act than those of non-listed public companies, for instance a fine penalty and 5-10 year imprisonment in case of fraud or swindle, due to most of the injured parties being public shareholders.

If you encounter any illegal behavior in the company, and you as a director do not protect the firm, you may be held liable. This is because you, as a member of the board, failed to perform your fiduciary duty.

- **Accountability of management**

To prevent inappropriate persons damaging public companies, SEC and SET have established criteria for disqualification of directors and executives.

- **Issuing of securities**. SEC stipulates that only a company whose directors and executives are not disqualified is eligible for approval for a public offering. Otherwise, the company will be granted approval only when those directors or executives vacate their positions.

  Criteria for disqualification include a record of failures to perform duties of care and fiduciary duties resulting in detriment to the company, or obtaining unjust advantage for one's own or another's benefit.

- **Maintaining listed company status**. SET stipulates that a listed firm must not have any directors or executives appearing on a SET 'blacklist'. If so, such a company may be de-listed. SET may place the names of company directors or executives who fail to comply with its regulations, or meet other criteria for disqualification, on a blacklist for a period to be determined by the Exchange.

A criminal indictment related to being a company director or executive leads to automatic disqualification. Some improper or wrongful actions by directors and executives may not constitute criminal offences, but may be sufficient to provoke disqualification proceedings by SET or SEC.

Part 2
Roles and Responsibilities of Board of Directors

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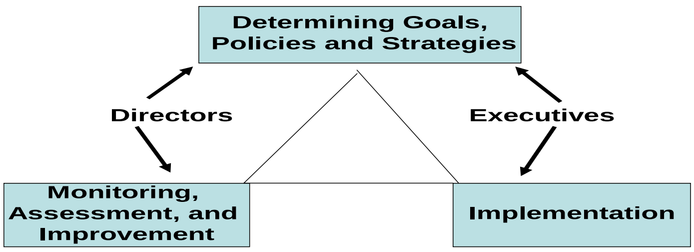
Part 2 Roles and Responsibilities of Board of Directors

1. Fundamental roles and responsibilities

Legal Perspective. The Public Company Act states "The board of directors has powers and duties in managing the business of the company in accordance with the company's business objectives, articles of association, and shareholder resolutions." Therefore, the scope of powers vested in the board of directors may vary depending on those specified in the company's articles of association and shareholder resolutions. Certain material matters are to be passed by shareholder meetings as required by law, e.g., an increase or decrease of capital, dividend payments, or corporate mergers. This means that the board of directors has no power to approve such matters, but still has a duty to provide opinions at shareholder meetings.

Business Perspective. Companies are established for profit-making purposes, and you are a representative of the shareholders, who seek the highest return from their investment. Your role is to maximize the value of the business for the shareholders. As a general management principle, success requires the following:



In practice, the board of directors usually delegates the business and activities of the company to the management team. Consequently, the fundamental roles of the board of directors fall into two areas:

- Leadership – determining business directions, goals, policies and strategies
- Relations with management – monitoring the performance of management.

1.1 Leadership

To ensure the operations of the company are in accord with the directions determined by the board of directors and in the best interests of shareholders, the duties of the board include:

- Selecting qualified and experienced personnel as senior managers. Although the board does not supervise management of the firm on a daily basis, it is still the board's duty to select appropriate senior managers.

- Determining business directions, vision, goals, policies, and budgets. This should be done in co-operation with management to establish mutually acceptable plans.

- Delegating authority to management to perform the managerial functions required to meet the company's goals.

  This authority should be written and specify the types of transactions and powers delegated. The scope of powers should be flexible enough to allow management to undertake any actions and decisions in the ordinary course of business expeditiously and effectively. At the same time, the scope of powers should not be too broad, excluding significant matters with either widespread impact, or not in the company's ordinary course of business (e.g., investments in other business, or large business transactions), or those dealing with conflicts of interest involving the management and executives. These should be considered and approved by the board to reduce operational and management risks (in some cases, shareholders' approval may be required).

  You and the other directors should take the initiative. It should not be left to management to propose any matters for consideration by the board.

- Determining criteria to measure the executives' performance and achievements in regard to goal and action plans (a performance management system), for example, the KPI and balanced scorecard system, the cascade of policies and goals from the management level, etc.

- Establishing a risk management system suitable to the firm's needs.

1.2 Responsibilities towards management (check and balance power)

The board is fully responsible to shareholders for a company's performance. Therefore, the board's role in monitoring and feedback should include:

- Ensuring the availability of accurate and complete accounting records and efficient record filling management available for inspection. This will help both the board of directors monitor management performance, and the shareholders monitor company performance.

- Establishing an efficient and effective reporting system — measuring goal achievements and any problems or difficulties encountered — to enable the board to monitor, review and amend plans and strategies as and when necessary.

- Establishing an adequate and suitable internal control system to ensure that all relevant transactions are approved by authorized persons, that accounts and records are kept accurately, and that the relevant systems to prevent improper use of company assets are operating.

- Evaluating the performance of management and executives, and establishing remuneration.

- With due care and loyalty, approving transactions, or submitting the board's opinions to shareholders for their approval.

Detailed guidelines for each item are in handbook volume 2.

2. Characteristics

To efficiently achieve the two fundamental functions of the board of directors, the following three factors are essential:

(1) The structure and composition of the board of directors are suitable for the performance of its duties;

(2) The board of directors has an efficient and effective operating method;

(3) Each director understands his/her roles and duties and performs efficiently to reach agreed goals, i.e. creating the highest value for the company and shareholders.

2.1 Composition

Principles

The board of directors plays a significant role in determining business directions and policies, as well as supervising and monitoring. The board should, therefore, possess the following characteristics:

- Sufficient business knowledge and experience, to provide management with business directions and policies, and to be competent in supervising and monitoring their performance. Some directors may be appointed managing executives because of their business involvement, and to provide liaison between the board and management;

- An appropriate size: not too small to handle the workload, and not so large as to lose effectiveness and flexibility;

- A diversity of competence and experience to oversee and supervise an assortment of demands and risks.

Practice Guidelines

How can the board of directors be "independent"?

"Independence" in this context means independence from major shareholders (whereby an independent director holds not more than 5% of shares in a company) and managing executives. In a private company, major shareholders are often appointed as directors, or appoint their representatives as directors or executives to manage and supervise the company's assets. Naturally, the directors or executives with direct ownership in companies have a stronger commitment to creating company value than external directors, who may simply receive board-meeting allowances. If you are not an "independent" director in this sense, it is not a problem, provided you are aware, on each occasion, whose interests you are serving.

Not having independent directors focusing exclusively on business returns can create a higher risk, because management can act without vigilant monitoring. This could lead to a lack of due care by management. Furthermore, there can be a conflict between the interests of the company (where management receive profits and other benefits proportional to their shareholding) and the personal interests of management, thus, compromising the interests of external shareholders. Therefore, there should be independent qualified directors for ‘check and balance’ purposes, and to maintain the confidence of other shareholders. Regardless of whether independent or not, all directors have the responsibility to create the highest value for the company.

SEC notifications and SET regulations require a listed company to have at least three independent directors to act as an audit committee (see details in 2.3). In addition, SET’s ‘15 Principles of Corporate Governance’ recommend that at least one third of the board of directors be independent.

Should the president be the managing director (MD)?

The president of the company is one of the directors, who are meant to act as a unitary group (the board). Therefore, the president of the board does not have absolute nor superior powers. The Public Company Act describes the additional responsibilities and duties of the president such as (1) acting as a chairman at board meetings, (2) having a casting vote, (3) calling board meetings, and (4) acting as a chairman at shareholder meetings.

In general, when the president and the MD are not the same person, the board of directors is better able to supervise and oversee management. If one person assumes both roles, the board can still perform these functions. Examples include:

- Where the president has a conflict of interest because he acts as MD of the company (e.g. the MD’s performance assessment), the president does not attend board meetings considering matters relevant to the MD. Another director takes the chair.

- Where there is no conflict of interest, the president can participate in the board meeting. However, any director may protest and request the board to vote on the president’s attendance, or request additional information on the matters to be considered.

- Increasing the proportion of independent directors may help to balance the president’s influence.

- A review of delegation procedures will help to ensure that important matters will be appropriately considered at the board level.

According to the ‘15 Principles of Corporate Governance’, there is no prohibition on one person assuming two positions. They merely recommend that unlimited and absolute power should not be granted to one person.

How Many Directors are in a Company?

The Public Company Act states that a company must have at least five directors, and each company can fix the number of its directors as it deems appropriate in its articles of association. However, at least half the directors must be resident in Thailand.

Several handbooks suggest that the appropriate number of directors is between 9 and 15. No single number suits all companies. Overseas the number of company directors has tentatively declined to enhance efficiency.

2.2 Selection and appointment

Principles

Directors are representatives of all shareholders. Therefore, the following process for selection and appointment of directors is recommended:

- Empowering shareholders, in proportion to their shareholding, to nominate and select any person who has appropriate qualifications and trustworthiness to be a director;

- Enabling independent persons with appropriate qualifications to take up positions as independent directors;

- Regarding reappointment, having a mechanism for performance assessment of existing directors to strengthen accountability, and to ensure that only competent directors are re-appointed.

Relevant rules

The Public Company Act provides two voting methods for appointing directors, one of which a company may choose and specify in its articles of association.

- **Majority voting.** This method is used in most companies. For example, where 5 positions are vacant and 7 persons have been nominated, the 5 persons with the highest tallies are appointed as directors. This means shareholders, with more than 50% of the total shares held by shareholders attending the meeting and voting, are able to control the appointments. Where a company specifies this voting method in its articles of association, each director has a maximum of 3 years in office with an annual rotation.

- **Cumulative Voting.** This voting method allows shareholders to target their votes at specific nominations. For example, if there are 5 directors to be elected and 100 shares in a company, and you hold 10 shares, your votes will equal 50 (5 X 10 = 50 votes), which you may allocate towards any of the candidates. If you give all your votes to one candidate, this person will have a greater chance of being elected. Although this method appears complicated, the directors elected are more likely to reflect the proportionate shareholding of each group of shareholders. Under this system, all directors have a one-year term in office and appointments take place annually.

Practice guidelines

Selection of directors. A nomination committee can expedite the appointment of directors at the shareholder meeting without compromising the rights of shareholders, who may still nominate any person for appointment. The company should encourage shareholders to exercise their nomination rights (see details on proposing the appointment of directors in an agenda in handbook volume 3).

Appointment of directors. Voting for individual nominations, rather than all positions at once, induces shareholders to consider each candidate.

2.3 Structure

To increase the efficiency and effectiveness of the board of directors, the board may appoint committees to perform some of its duties in lieu. However, the board retains its responsibility to monitor and oversee the performance of these committees, in line with the company's goals and level of authority delegated to them. It is a common practice to appoint several committees with the following responsibilities:

- **Executive committee**

Where the board of directors appoints an executive committee, its authority must be clearly defined. It should not substitute for the board in considering serious matters. Normally, the executive committee will be delegated powers to review matters before submission to the board, approve ordinary business operational matters and agree to transactions up to a certain financial limit. An executive committee member may or may not be appointed the managing executive of the company.

- **Audit committee**

To ensure the board of directors meets corporate governance standards, the SEC and SET rules concerning the approval of public offerings require the boards of listed companies to appoint an audit committee, consisting of at least three independent directors, to perform the following duties and responsibilities:

- Review the accuracy and reliability of the company's financial statements;
- Review the adequacy and efficiency of internal control systems;
- Review the company's compliance with relevant laws and regulations;
- Select auditors and decide their remuneration;
- Supervise the disclosure of accurate and complete information in regard to 'connected transactions';
- Undertake any other action as authorized by the board of directors;
- Prepare the reports of the audit committee for submission to the board of directors and for publication in the company's annual reports.

To perform the aforesaid responsibilities and duties efficiently, the audit committee should meet the following criteria:

- Be independent from management and major shareholders to the extent that there is no influence on either the audit or its inquiries.
- Have sufficient knowledge of business, accounting and finance to be able to understand and identify problems and give competent advice.
- Have authority to access any information and documents, to request any executives and employees for additional information and clarification, and to contact and consult external auditors directly.
- Establish independent networks, such as an internal audit unit to act as a secretary and follow up work for the audit committee.
- Have full support of the board of directors and key executives, who understand the committee's role in relieving the board of certain duties and responsibilities, to reduce the company's risk, build up shareholder confidence, and maximize value to the company.

Although the board of directors establishes the audit committee to undertake tasks demonstrating the company's accountability and transparency, the appointment of this committee does not release the directors from the responsibilities and obligations associated with the matters delegated (see details of powers and duties of the audit committee in the *Good Practice Guidelines for the Audit Committee* by SET and handbook volume 2).

- **Nomination committee**

To ensure that persons who become directors and key executives of the company are sufficiently knowledgeable, capable and experienced, and, where appropriate, independent, many companies appoint a nomination committee to recruit and examine candidates, before recommendation to a board of directors or shareholder meeting. A nomination committee is generally appointed on an ad-hoc basis. If no nomination committee is appointed, the whole board of directors, not individual members, should be responsible for the nomination process.

- **Compensation committee**

A compensation committee decides the remuneration of directors and key executives in proportion to their powers, duties, responsibilities, and performance. The person deciding remuneration should not be the same person as the one being evaluated, or be answerable to that person. Where the company does not appoint a compensation committee, the whole board of directors should be responsible, with directors being evaluated absenting themselves from the relevant board meeting.

- **Risk Management Committee**

Large and complex businesses, especially financial institutions, should establish a risk management committee, consisting of qualified persons with knowledge and experience in the particular business, to identify risks, determine preventive measures, and monitor such risks. In some companies, the audit committee assumes this function as part of the firm's internal control system.

SET and SEC do not prescribe any requirements for nomination and remuneration committees, but rather encourage listed companies to do so as part of transparency and good corporate governance practice. All members of an audit committee, and most of the members of the nomination and the remuneration committees, should be independent from management.

3. Conduct of the board

Principles

The board of directors should conduct its functions according to the principles of good corporate governance. This means understanding the responsibilities and accountabilities of the board, respecting shareholders' rights, providing equitable treatment of shareholders and other stakeholders, conducting business transparently, and disclosing sufficient and accurate information. The board should hold meetings as often as required to carry out and fulfill their functions with due care. Any actions and decisions of the board of directors should be recorded in writing, accurately and completely, and maintained in an orderly system for future inspection.

Practice guidelines

Corporate governance policies. To ensure that all directors, executives and employees share the same policies and practice guidelines, the board of directors should collectively determine the company's corporate governance and require full compliance within the organization. According to SET's 15 Principles of Corporate Governance, companies are required to draft written corporate governance policies and publish them in their annual reports.

Codes of ethics. Corporate governance policy includes fair treatment of counter-parties and stakeholders. The board should establish and disseminate a code of conduct handbook to guide all the organization's executives and employees, and require strict compliance with these standards.

The board meeting. The Public Company Act requires the board of directors to hold a meeting at least once every three months. The necessity and frequency of board meetings will vary from company to company, depending on the size, complexity and volume of business. Other factors affecting meeting frequency are the experience, knowledge and efficiency of the managing executives and committees, and the level of confidence the board has in such persons and committees, the business operations for which the board is accountable to shareholders, and the board's understanding of the degree of due care required in overseeing performance.

Directors' conflicts of interest. The Public Company Act sets forth provisions regarding directors' conflicts of interest:

- Prohibition of competing with the company unless approval received at a shareholder meeting prior to the director's appointment;

- Prohibition of receiving remuneration unless specified in the company's articles of association or shareholders' resolutions;
- Disclosure of the director's stakes and interests in any contracts entered into by the company;
- Entering into any transactions (such as selling or buying goods or other assets, etc.) between directors and the company must be approved by the board of directors - otherwise the respective agreements are not binding on the company;
- Directors with stakes in any matters being considered by the board must absent themselves from the relevant board meetings;
- Prohibition of the company's acting as a lender or guarantor for directors or any businesses in which a director's shareholding exceeds 50%, except for those provided for as part of welfare.

SET regulations concerning connected transactions impose additional requirements with respect to the disclosure of information and the range of approvals required. The term "connected transactions" covers more than transactions entered into between directors and the company under the Public Company Act (see details in handbook volume 2).

Relations with shareholders. The Public Company Act requires the board of directors to hold a general shareholder meeting annually, prepare the company's annual reports, and propose any matters required for approval at shareholder meetings before actions are taken (see details in handbook volume 3).

As the board is the representative of shareholders, they should be able to participate in decision-making about any material matters regardless of whether shareholders' resolutions are required by law. For example, the memorandum of association of the company may state in broad terms the business activities of the company. If any expansions or changes to the core business occur, a shareholders' resolution is not required as long as the new activities are covered by the memorandum of association; an amendment of the memorandum is not required. However, if such expansion or change of business has material affects on corporate opportunities, risks and returns to shareholders, the board should seek prior approval at a shareholder meeting, even if the new business activities are covered by the memorandum of association.

In addition, to enable shareholders to have sufficient information to monitor the company's performance, the board of directors has a duty to disclose sufficient and accurate information in financial statements and reports prepared for shareholders. The board should ensure the effective dissemination of information to shareholders (financial statements, annual reports, schedules of shareholder meetings, notices of meetings, minutes of shareholder meetings, changes in financial information, etc.). This should first be published through SET systems, and through the company's website. Persons responsible for information dissemination to investors (investor relations) should also assist.

Company secretary. To achieve smooth business operations, the board should appoint a company secretary (or a secretary to the board of directors). The company secretary's duties include: to follow up and monitor the performance of the board in line with statutory requirements, articles of association and shareholders' resolutions; to manage, prepare and maintain any documents used for board and shareholder meetings; and to liaise with the relevant authorities.

Conclusion

You are the one who is entrusted by the shareholders to manage the company's assets. As a member of the board of directors, you should perform such functions with due care and loyalty in the best interests of the shareholders, the owners of the company, in return for their trust and confidence in you.

Corporate governance mechanisms are introduced to ensure fairness, transparency and accountability. No matter what the rules or recommendations are, their success finally depends on the fundamental principles underpinning the management of assets – management with due care and loyalty in the best interests of the owners of the assets, sufficiently transparent to allow the monitoring of asset management.

To create the best return to shareholders, the board of directors has duties and responsibilities to direct business policies and to supervise and oversee the performance of management in line with the goals of the company. As all directors have equal responsibilities, you, as a member of the board, should ensure that its structures, composition and working procedures can help it fulfill its duties and obligations.

Appendixes

Appendix 1 Types of directors
Appendix 2 The law and directors
Appendix 3 Resources for directors

Appendix 1

Types of directors

The board of directors is a unitary group of persons, having powers, duties and responsibilities for the business operations of a company and, thus, accountable to shareholders. It may delegate authority on certain business matters to professional managers or committees to act and perform in lieu of the board. However, it still has the overall duty and responsibility to supervise delegated persons and committees to ensure that they act in accordance with the scope determined by the board. All directors have equal responsibilities as members of the board of directors. In practice, there are a range of different types of directors:

- **"Executive directors"** has two connotations:

    1. Directors who are **members of the executive committee**. Many companies appoint executive directors to review matters for consideration by the board of directors, or to make decisions on designated matters in lieu of the board.

    2. **Executive directors** who undertake management functions with fixed salaries, as opposed to non-executive directors (NED) who merely serve as directors with no management functions. Such directors may or may not be independent.

- **Independent directors.** This term does not describe a formal position of directors, but rather a certain characteristic. Pursuant to SET and SEC rules, the definition of "independent director" means a director who holds no more than 5% of shares in a company, or is not an executive or employee of the company or its subsidiaries, or has no relations with the company's management, executives or major shareholders. (definitions vary).

- **Audit committee directors.** This term refers to directors who are appointed members of the audit committee (see Part 2).

- **Authorized directors.** The company has the status of a juristic person. Therefore, it is necessary to appoint one or more director(s) to sign on behalf of the company. The conditions of authority to sign appear in the company affidavit, available for inspection.

    It should be noted that the authority to sign constitutes the identification of the company to a third party. It is not an internal approval authority within the company. When a company enters into any transaction, it may require an internal approval process as specified in the company's articles of association, or a delegation of authority from the board of directors to management, or from management to employees. As a result, if you, as an authorized director, sign transactions without such internal approval or act beyond the scope of the business objectives of the company, such transactions or actions may be legally void, and you may be personally liable for such transactions or actions.

Frequently asked questions

Q: Can authorized directors be treated as independent directors?

A: In principle, independent directors should perform their monitoring functions by supervising management performance. Therefore, they should not act as authorized directors with authority to approve transactions, or sign legally binding documents on behalf of the company.

However, from a legal aspect, the director's status as an authorized director appears in the company affidavit registered with the Ministry of Commerce. Many companies register their authorized directors with broad powers. For example, "any two of the fourteen directors may jointly sign, with the company seal affixed, to legally bind the company". Only a few directors exercise authority to sign, as many directors who have the authority do not sign in practice and, thus, are qualified to act as independent directors.

Q: Can directors, who are appointed as members of the executive committee, but do not serve in a management position in the company, and do not have a relation with major shareholders or the management or executives, perform the duties of independent directors?

A: In principle, the function of independent directors is to oversee management performance. Therefore, independent directors should not have the authority to approve transactions or sign legally binding agreements.

However, the answer will vary depending on the powers of the executive committee. If the executive committee has the responsibility of reviewing matters before submission to the board of directors only, such directors, as members of the executive committee, may undertake the role of independent directors. On the other hand, when the executive committee has powers to approve transactions, the executive directors may not be able to independently audit management performance, and so should not be treated as independent directors.

For financial institutions, the Bank of Thailand (BOT) has established guidelines, taking into consideration the characteristics of directors' remuneration. If receiving salaries, they will be regarded as management, and, as such, not regarded as independent directors.

Appendix 2

The law and directors

- **The Public Company Act B.E. 2535**
  Regulator: The Business Development Department, Ministry of Commerce
  Applicable to: All public companies
  Scope: It includes significant matters as follows:
  1. The formation, operation, merger, dissolution and liquidation of the company;
  2. Rights of shareholders, shareholder meetings, and the exercising of voting rights;
  3. Appointment, powers and duties of directors;
  4. Capital, calling for share payments, increase and decrease in capital, and types of shares.

- **The Securities and Exchange Act B.E. 2535**
  Regulator: The Securities and Exchange Commission
  Applicable to: All listed companies and companies issuing securities to the public
  Scope: Regulations governing companies and directors:
  1. The issuing and offering of securities such as shares, debentures, warrants, etc., require approval from SEC, and information disclosure to investors by filing a registration statement and prospectus with the SEC office.
  2. Disclosure of information, financial statements, periodic reports, company news, and the trade in shares by directors and executives.
  3. Tender offers for corporate takeovers which require certain duties of a prospective buyer, and the opinions of the board of directors concerning a target company.
  4. Unfair securities dealing practices, such as manipulation, insider dealings, etc.
  5. Improper practices in listed companies, such as acting for personal advantage, cheating, fraud, destruction of company assets, etc.

- **The Regulations of The Stock Exchange of Thailand (SET)**
  Regulator: The Stock Exchange of Thailand (issuing several regulations under the Securities and Exchange Act)
  Applicable to: Listed companies
  Scope: Significant requirements for the listed company and directors:
  1. The listing of different securities as listed securities, prohibitions on directors, shareholders and connected persons selling shares within specified periods of time, and delisting;
  2. Disclosure of information, signing for securities trading, etc.;
  3. Maintaining the qualifications of listed companies, such as the appointment of an audit committee, requirements on connected transactions, acquiring or disposing of company assets, blacklisting of executives, repossession of shares, etc.;
  4. Practice guidelines for good corporate governance, such as the '15 Principles of Corporate Governance', 'Practice Guidelines for Audit Committees and for directors of Listed Companies', etc.

- **The Civil and Commercial Code (Book 3 Title 22 Partnership and Company)**

  Regulator: The Business Development Department, Ministry of Commerce as company registrar

  Applicable to: All private companies

  Scope: Similar to the Public Company Act, but applicable to private companies. Subsidiaries of listed companies are often established as private companies. Directors of public companies have duties to oversee company management and assets, including funds invested in the company's subsidiaries. Directors should therefore fully understand the relevant provisions of the Civil and Commercial Code, as some differ from the Public Company Act.

- **Laws governing specific businesses**

  Certain types of business are subject to specific laws:

  - Banking and finance businesses are under the supervision of BOT through the Banking Act and relevant laws.
  - Life and property insurance businesses are under the supervision of the Insurance Department, Ministry of Commerce, through the Life Insurance and the Assurance Business Acts.
  - Securities business is under the supervision of SEC through the Securities and Exchange Act.

Listed company's directors should explore whether there are other laws affecting the business and operations of their company, and what the legal requirements are.

Appendix 3

Resources for directors

Local websites dealing with corporate governance

- **National Corporate Governance Committee (http://www.cgthailand.org)**

Aims to encourage and educate companies by illustrating the importance of good corporate governance, and providing guidelines for practice.

- **The Office of Securities and Exchange Commission (http://www.sec.or.th)**

Provides information concerning financial statements, information disclosure for companies issuing securities and listed companies, public offerings, firms winning "Disclosure Awards", CG ratings, rules and other publications such as *"A Guide for Shareholder Meetings"*, **"***Knowing the Rights of Investors"*.

- **The Stock Exchange of Thailand (http://www.set.or.th)**

Gives information regarding listed companies, trading securities, and publications such as:

  - Samples and 15 checklists for CG assessment
  - Samples and self-assessment forms for the board of directors
  - Good corporate governance principles
  - Best practice guidelines for an audit committee
  - A guide for the board of directors
  - A guide for shareholder meetings

- **The Institute of Internal Auditors of Thailand (http://www.theiiat.or.th)**

Displays information about internal audits, including several articles and publications, such as, *"Internal Audit and Corporate Governance for Business"*, *"Corporate Governance"*, and *"Management Audit"*, etc.

- **The Thai Corporate Governance Program (http://www.thaicg.org/indext.html)**

This is part of a research project on corporate governance undertaken by the Thailand Development Research Institute (TDRI), sponsored by the United Nations Development Program (UNDP), to provide knowledge and information about corporate governance in Thailand, and introduce the public to relevant resources. The contents include:

  - Reports of the research project and articles concerning corporate governance in Thailand;
  - Case studies on corporate governance in Thailand;
  - Corporate governance ratings by local and international institutes and organizations;
  - Links to local and international websites, including Thai listed companies and the media.

Training Programs

- **Thai Institute of Directors Association (http://www.thai-iod.com)**

The Thai Institute of Directors Association was established to provide training and knowledge to enable directors to perform their duties and responsibilities efficiently and meet good corporate governance standards. The training programs offered include:

- **Directors Certification Program - DCP**
  A 5-day training program covering the principles of good corporate governance, roles, duties and responsibilities of directors, practice guidelines for the performance of duties of directors, and case studies.

- **Directors Accredited Program - DAP**
  A 1-day training program which SET may require all directors of listed companies to do. The program covers the roles, duties and responsibilities of directors, and practice guidelines for directors on significant matters, e.g. information disclosure and connected transactions.

- **Chairman 2000 Program**
  Covers significant issues regarding the president's roles of leadership in and outside the board rooms.

- **Company Secretary Program**
  Deals with the roles, duties and responsibilities of, and practice guidelines for, the company secretary emphasizing effectiveness and good corporate governance.

- **Audit Committee Program - ACP**
  Includes the roles, duties and responsibilities of, and practice guidelines for, the audit committee, e.g. risk management, internal control, analysis of financial reports, and disclosure of information.

Corporate Governance Rating

- **Thai Rating and Information Services Co., Ltd.**
  (TRIS: http://www.tris.co.th/index.html)

TRIS was selected by SEC to undertake a corporate governance rating service. For those interested in corporate governance ratings, there is a great deal of information available on TRIS's website.

International Information

Any search engine will take you to the stock exchange and securities and exchange commission websites for each country. SEC's website has links to most. These websites often provide useful international insights into the roles and duties of directors, corporate governance and links to other agencies.

Some relevant international websites are:

- The World Bank (http://www.worldbank.org/wbi/governance/index.html)
- The Organisation for Economic Co-operation and Development (http://www.oecd.org)
- The National Association of Corporate Directors (http://www.nacdonline.org)
- European Corporate Governance Institute (http://www.ecgi.org/codes/index.htm)
- The Encyclopedia about Corporate Governance (http://www.encycogov.com)
- The Corporate Library (http://www.thecorporatelibrary.com/)
- The Global Corporate Governance Forum (http://www.gcgf.org/index.htm)
- Institute of Directors : UK (http://www.iod.co.uk)
- The Institute of Chartered Secretaries and Administrators (http://www.icsa.org.uk/)
- The World Business Organization (http://www.iccwbo.org/cg.htm)

Laws and Regulations

- **The Securities and Exchange Commission (http://www.sec.or.th)**
  - The Securities and Exchange Act (1992)
  - Notifications of SEC and of the Office of the Securities and Exchange Commission

- **The Stock Exchange of Thailand (http://www.set.or.th)**
  - The Securities and Exchange Act (1992)
  - Rules of SET

- **The Bank of Thailand (http://www.bot.or.th)**
  - The Commercial Banking Act (1962) and relevant rules and regulations
  - The Conducting of Finance, Securities and Credit Foncier Businesses (1979)
  - Relevant rules and regulations

- **The Ministry of Commerce (http://www.moc.go.th)**
  - The Public Company Act (1992) and relevant rules and regulations
  - The Life Insurance Act (1992) and relevant rules and regulations
  - The Assurance Act (1992) and relevant rules and regulations
  - Other laws under Ministry of Commerce, e.g. the Patent Act (1979), the Copyright Act (1994), the Trademark Act (1991)

Director's Handbook
Volume 2

" … Many people feel that "Corporate Governance" and "Good Governance", often collectively and informally called "CG", are vague terms and are unsure about how to comply with them …"

If this is how you feel, this handbook will help you. It is intended for board and audit committee members to explain the duties of directors regarding board resolutions. This handbook will also provide guidelines and help make you aware of issues to consider while making resolutions.

Most of the notifications of SEC and SET are aimed to strengthen listed companies' CG, which will in turn increase the firms' accountability in the eyes of investors. Therefore, by following the guidelines, organizational CG will not only be strengthened, but a director would also work more efficiently and effectively with "care and loyalty" to preserve the firms' interest. Moreover, it will also help reduce the personal liability of individual directors.

This handbook is one of three volumes:

Volume 1 **Role, duties and responsibilities of directors and board of directors**

Volume 2 **Practice guidelines for directors**

Volume 3 **Rights and equitable treatment of shareholders and shareholder meetings**

The handbook deals only with overall principles, rules and guidelines. It will not provide details and cannot serve as a substitute for studying the legal framework or for assigning someone to ensure compliance with the law.

This handbook was screened by and based on advice from the Reading Committee, consisting of representatives from SET, Listed Company Association, Thailand Trade Commission, Institute of Directors (IOD), the board of the year 2002 selected by IOD and other qualified persons. The Office of the Securities Exchange Commission is grateful for the support of all of the aforementioned organizations. We hope that this handbook will enable you to exercise your duty correctly and completely.

Director's Handbook

Volume 2

Practice guidelines for directors

The Office of the Securities and Exchange Commission

January 2007

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Part 1

Guidelines on Being a Director

Part 1
Guidelines on Being a Director

General guidelines

The board of directors has the power, duty and responsibility to operate the business of the firm for shareholders with care and loyalty to preserve company interests. The board reaches decisions jointly, (not dependent upon on a single member's decision, e.g., chairman, major shareholders, or chief executive officer). Everyone on the board shares equal responsibility.

The director's role is neither to centralize power nor to be a rubber-stamp waiting to approve whatever actions management proposes. On the contrary, your role is to jointly think, work and be jointly responsible for operating the company for the best interest of the shareholders.

To create the best value for the shareholders you should effectively monitor management and its accountability to the company and shareholders. You should at least take the following actions:

Prepare for a director's duties by:

- Clearly understand the nature of the company's business, to oversee opportunities, risks, and business issues.
- Follow-up on related news and information and consider any impact on the company.
- Actively seek knowledge concerning the duty and responsibility of directors, including attending training courses available for directors, e.g., those arranged by Thai IOD (Institute of Directors)[1].

Attend board of directors meetings with attention and diligence

- Attend every meeting unless your absence is inevitable. As the shareholders appointed you personally to be a director, you should not delegate others to attend meetings for you.
- Study the agenda before attending and double-check information given to you by using sources other than those provided with the agenda in order to be proactively able to carefully consider the issues. (This means that you should have the secretary of the board give you the agenda with adequate details and information well in advance of the meeting. Having those documents will help in demonstrating that you have done your duty with due care based on a 'having been fully informed basis').
- Raise searching questions on important issues so that you will receive accountability and credible information.
- Disclose to the board whether you, directly, indirectly or on behalf of third parties, have a material interest or conflict of interest involved with the matters to be considered. You should inform the board of such interests or conflicts in writing and should be absent from the meeting

[1] Thai Institute of Directors Association, Tel.02-264-0870, website http://www.thai-iod.com

when it considers the matter. (If you have additional information of use to other directors, the board may request you to provide that information. However, you should leave the meeting when the board decides on the issue so that the board can exercise an independent judgment for the firm's best interests).

- Consider resolutions in the light of the firm's best long-term interests and be able to answer any questions if the matter is audited afterwards.
- Ensure that the minutes of any meeting are recorded in writing correctly and completely. If you disagree with any resolution, upon your request such disagreements should be minuted, along with your reasons. If you fail to have your objections minuted, you may have to take legal responsibility for that resolution together with other directors.
- If you are not able to attend a meeting, you should follow-up on the agenda of the meeting. If you have a different opinion from that of the other directors, you should so notify the chairman in writing within three days after the meeting in order to ensure that you are not held responsible for the matter later.

Miscellaneous

- Find an opportunity to be acquainted with, develop good relationships and seek opinions from the lower management levels in order to follow-up, update yourself, or to request information which may assist you to perform your duty. You may explain your actions to management in advance why a certain action was taken and that it was not intended to interfere with their work.

If you rigorously follow the above guidelines, you should feel comfortable that you have done well in your duty as a director. If any mistake occurs, you may be safe and may not be responsible personally.

Part 2

Guidance on Corporate Strategy

Part 2
Guidance on Corporate Strategy

Principle

Shareholders naturally focus on their return; therefore, the most important role of directors is to ensure the strategic guidance of the company. As mentioned in handbook volume 1, the role includes:

- Selecting, compensating, monitoring and, when necessary, replacing key executives, and overseeing succession planning using appropriate influence measures.
- Developing corporate strategy; setting performance objectives, including annual budgets, with management.
- Ensuring formal and transparent board nominations so that the board can follow-up on operations and decide on important matters.
- Setting criteria for executives to achieve targets and a performance management system.
- Providing risk management control.
- Following up on operational results to reach targets.

Guidelines

This handbook will mention only the principal guidelines on the board's role. Details vary from company to company, depending on guidelines or administrative theory that the company deems appropriate.

Selecting and monitoring key executives

- Since the board is responsible for the company's entire operations, it has the duty to select qualified and accountable persons capable of maintaining good relationships with the board for executive positions.
- The board shall oversee the said executives in achieving business targets by providing suitable remuneration schemes to the positions, which are comparable to others in the same industry.

  SET has a remuneration policy statement covering board members and key executives of listed companies in each industrial sector so those companies can evaluate their own compensation packages. More information about remuneration can be found in the information disclosure form and annual report.
- Selecting directors from major shareholders or from their own families to be key executives is not inappropriate. It is possible if the person is qualified, capable, and suitable, but the board needs a follow-up scheme and evaluate such individuals independently in the same way as they do with directors selected from outside.
- Even if the company has suitable executives, the board shall oversee succession planning. In addition, sufficient systematic operational support shall be provided to avoid dependence on individual knowledge or the experience of only one person.

- The board shall agree with executives concerning the method and elements in evaluating their performance seriously and independently.

Guiding corporate strategy, setting business targets and following-up

- To ensure that business operations of the company comply with the guidance to protect shareholders' interests, you should create the business target and business plan, including corporate budget, at least annually.
- Important business targets and plans should be arranged and approved by the board and management together so that such plans will be accepted and carried out.
- Business targets and plans should be clear and contain measures for evaluation, but corporate management should be flexible enough to improve upon and adjust targets to various situations.
- The management shall report regularly on realized results of business operations vis-à-vis targets to the board. If results deviate significantly from expectations, the board should seek explanations and solutions immediately.
- The board should set a system for management to report any circumstance which may significantly impact the company's reputation, business operations or financial status (e.g., , being sued by regulators or internal fraud) to the board in order to resolve the matter.

Part 3

Following-up on Corporate Operation

3.1 Corporate disclosure
3.2 Internal control and risk management
3.3 Remuneration for directors and management
3.4 Employee stock option plan (ESOP)

Part 3
Following-up Corporate Operation

3.1 Corporate disclosure

Concept

If you are appointed as a company director, but you will be neither able to access sufficient information concerning the nature of the business nor follow-up on corporate operation result, should you accept the position?

Investors, like you, are unlikely to feel confident in investing in a company where they could not trace how their money is being used or find out how their investment has grown. Such a lack of information would result in a lower stock price and damage the firm's business value.

Therefore, proper disclosure of information is important, and can be used to create accountability and business value. Even though it entails corporate expenditure, you should not assume that the expense is a burden. On the other hand, the expense should be considered as an investment in developing business value for shareholders.

Disclosure of information is important for major shareholders, directors or executives for following up on operations of lower-level employees. If you strongly demonstrate to employees that accurate disclosure of information is important, they would increase their efficiency in showing performance with care. This will also help reduce internal financial leaks in the organization.

What information is to be disclosed?

The main purpose of disclosure is to provide information to shareholders to assist them with two kinds of decisions. First is their investment decision (including following-up on results), which depends on the rules prescribed by the Securities and Exchange Act. Their second decision is to vote in general meetings of shareholders. Details of the agenda are provided in the notice of the meeting, according to the Public Company Act (as explained in handbook volume 3).

According to the Securities and Exchange Act, disclosure will provide investors with sufficient basis to make decisions; such information is of four types:

1. Financial reports: These consist of annual and quarterly financial reports showing the financial and operating results of the company, being reviewed or audited, as the case may be, by SEC-approved auditors. The company has a duty to provide accurate financial reports and to cooperate with the auditors in performing their duties.

2. **Annual information disclosure form** (Form 56-1): This form shows information that investors should have about the company (e.g., type of business transactions, shareholders and administration structure, explanation or analysis of corporate financial status, operation, future plans and risk factors).

3. Annual report (Form 56-2): This report provides similar information to Form 56-1, but is used for a different purpose. The board has a duty to execute and deliver an annual report to the shareholders before the annual general meeting. Shareholders are to use such information to follow-up on the operational performance of the board, consider appointments and re-appointments of directors, and determine remuneration for the directors.

However, Form 56-1 is used for general investors, and can be accessed through the website or the Office of the SEC and the SET. Form 56-1 is not related to the annual report which the company may send to its clients or business partners. However, the company may use the same copy as presented to the shareholders.

4. News on significant changes: The three types of information above are usually issued on a scheduled basis. However, the company shall immediately disclose any important change which may impact its securities price (e.g., cessation of business operations, change in business transactions, sale or purchase of important assets, and changes of executives.).

Details are provided in Appendix 1.

How should the firm conduct a "good" disclosure?

Information provided for making decisions shall be:

- Accurate, true and shall not cause any misunderstanding.
- Complete, sufficient, and contain essential, non-confidential information.
- Updated and delivered on time.

Who shall be responsible for the disclosure of information?

Having someone gather information for you does not release you from being responsible for its accuracy, completeness and timeliness.

Whether you are a managing director, who is able to access all corporate information, or a financial director, you have a direct duty and personal responsibility to make systems available to shareholders, file documents, keep evidence and records, update accounts accurately, and provide data to investors.

However, the law states that directors shall be liable (personally) to shareholders and related persons for any damage caused by providing inaccurate financial and operating results of the company. In order to ensure that the disclosed information is accurate, you should monitor the following issues:

- Monitor the company's accounting, filing and database management systems to record significant information accurately, completely and in auditable format.
- Ensure that a SEC-approved auditor is available to audit and give an opinion about the financial report.
- Ensure that corporate financial reports and disclosure information do not contain inaccurate or incomplete information.

A director who is not on the executive committee should carefully monitor the issues to protect himself from personal liability.

The board may appoint an audit committee to inspect the above issues, but the board is still responsible to the shareholders because the audit committee was appointed by the board. Therefore, the board shall support and empower the committee to work to its best endeavors and be able to access all needed information. The committee shall summon employees to provide additional information and be able to hire expert consultants for additional opinions, and have employees follow-up regularly, search for information, and co-ordinate with others to help the Committee. If the committee reports weak points in the system, the board shall consider finding solutions.

How to disclose accurate information?

It is difficult to tell the extent to which information is accurate unless you are the one who is managing the company. A tip for solving this problem is to have the responsible executive sign to certify that the information given is accurate and complete. In this case the executive is accountable, and you may feel more comfortable in approving the information. According to the SEC's rule, whenever an executive signs to approve information, it is assumed that the information is correct and the directors are acting on a fully-informed basis.

Suspicious that the disclosed information may be inaccurate.

If you suspect that the information might be inaccurate, but you still certify the information, then you may be regarded as being careless in performing your duty and may be liable for results. There are points to focus on in requesting additional information, for example:

- **Audit report**: You should note whether or not the report expresses an opinion with or without condition(s) and whether there are notes on important matters (e.g., failed to meet the accounting standards, did not obtain full cooperation from an executive, insufficient allowance for doubtful accounts). If the auditor's report is difficult to understand, feel free to ask for more information from the auditor or audit committee.
- **Changes in significant accounting policies**: Those who are not accountants may feel that numbers recorded in the accounts should be precise. However, in practice, recorded numbers are based on estimates (e.g. depreciation, allowance for impairment of assets, allowance for doubtful account etc.) Moreover, issues concerning when to record assets, debts, revenues and expenses in the account and when to remove them and how much value should be recorded are also debatable.

Investors are impacted by the above issues, because they would expect revenues deducted by expenses and they would mainly look at the profit shown in the account. Therefore, in recording the accounts, it is necessary to have an ***accounting standard*** so that the financial report can be compared. The company should disclose its ***accounting policies*** by stating how the company will record financial changes in each case. The selected policy should be based on consistency and a conservative basis.

As a director, you are not expected to know all the accounting standards, but you must know that some accounting policies materially influence financial status and corporate performance. The selected policy should be used on a consistent and conservative basis. If there are any changes on the selected accounting policy, you should question it to ensure that the changes are suitable and the company is able to display a credible financial status and operating results. Information about accounting policies changes can be seen on notes to financial statements. Generally the auditor will usually raise issues to be scrutinized in the auditor's report.

In addition, members of an audit committee should learn thoroughly about the nature of the business and corporate risk. Furthermore, you should review the present corporate accounting policy to determine its suitability.

- **Significant changes to financial figures**: The financial report is always shown in comparison to the previous term. Form 56-1 also shows financial ratios with explanations. If there were any significant changes, you should question and consider whether such changes are in line with the corporate plan, budget and approved projects. This will also help directors to review the plan's suitability. You should pay attention to any special item and explain it in Form 56-1, because investors will always have the same doubts as you do.

- **Conflict of figures in financial reports**: A financial report consists of four important parts, as follows:

    - **Balance sheet**: shows figures representing the status of the company, which consist of assets, debts, and shareholder equity on the date specified in the balance sheet;
    - **Profit and loss sheet**: shows figures of operational results in the previous term;
    - **Cash-flow sheet**: shows sources of cash being received and cash being used;
    - **Shareholder equity changes sheet**; and
    - **Notes to the financial statements**: shows details and additional explanations of the financial report.

If there is an apparent conflict between the figures, the director should find the extent to which the company has reasonable grounds for the figures shown.

- **High volume of connected transactions**: these transactions are identified in the Notes to Financial Statements and Form 56-1 because those approving the transaction may have had a conflict of interest; therefore, this transaction may not be fair for general shareholders (e.g., having unfair transfer pricing).

If the company has a high volume of connected transactions, you should review whether those transactions are normal or have been approved by the board. You should check whether the price is fair compared with or is different from the price independently transacted with third person. As an audit committee member, you should see whether the actual transactions are in compliance with conditions approved and disclosed by the board, using random verification.

The above issues will help you make queries and find out suspicious information. You should pay more attention on other issues considered as an individual risk to the company. The most important thing is that when you find any suspicious information, you should request clarification. If such clarification is not convincing, the information should be corrected and be supported with an additional opinion from the auditor.

Although the above operations will not ensure accuracy of all the information, they will protect you from personal liability since you have taken sufficient care to ensure that the disclosed information is reliable.

Where are sources of information?

You may not only verify figures in the financial report, but also seek information from the following sources:

- **Discuss with the auditor**. Directors appointed on an audit committee should discuss with the auditor before the official report has been issued. You should ask for the auditor's opinion concerning:

    - Sufficiency of internal control. You should ensure that evidence is available and accurate.
    - Suitability of accounting policies
    - Cooperation that the auditor obtained in performing his duty and other-observation.

The auditor will always provide a report for the company which contains more details than the disclosed financial report. Therefore, an audit committee should request such a report.

If you find that the auditor has raised issues, you should take into consideration that the auditor is a professional to assist you to inspect the correctness of the financial report. You should adjust the financial report, accounting system and internal control to be more suitable as advised by the auditor. The audit committee should record its discussions and operations in the inspection report.

- **Audit committee report**. Directors who are not on the audit committee should study the audit committee report presented to the board in detail. If there is an issue to be discussed, everyone should help to clarify it; do not think that this is only the audit committee's duty. The audit committee has done an initial inspection for the board, but the responsibility still belongs to the board.

- **Discuss company matters with internal control, accounting, financial or other officers**. You should associate with those officers and provide sufficient security and confidence that they will inform you of any suspicious aspects or weaknesses in the systems.

- **Meet and discuss company matters with investors and investor relations officers**. After such discussions, you should understand more about needs and expectations of investors. By gaining such information, you can provide positive responses to investors, who are the owners of the company.

3.2 Internal control and risk management

Concept

In monitoring management's operations to meet targets, policies or plans laid down by the board, even if you, as a director, are not able to watch over the entire operations by yourself, you are able to support the firm's having an internal control system and risk management by ensuring that:

- The operation or performance of any undertakings are efficient, effective and in line with policies, regulations or corporate strategies, including related laws and rules.
- Corporate properties are taken care of, protected, and are ready for use without any outflow or waste. Moreover, the properties shall used only for company benefit, and with authorization.
- Financial reports are prepared reliable.

In the past, some companies focused their internal control on specific points, but such specific control may not be enough to cover the entire risk, and the company may thus be incapable of achieving targets. Therefore, internal control systems and risk management are closely related and both should be encouraged in every level of the organization. Insufficient internal control may lead the company to collapse, as has happened to even large size businesses.

Related rules

At present, there is no specific law or regulation for internal control, but it is the duty and responsibility of the board to provide sufficient and appropriate internal controls to preserve the interests of the company.

SET regulations state that the board has the duty to review and give its opinion concerning the sufficiency of the internal control systems. Such an assessment shall be disclosed in the information form and annual report. However, nothing is able to indicate level of "sufficiency" since it depends on judgment and varies by company. Therefore, as the audit committee was assigned by the board, the board is still responsible for, and should pay attention to, the matter.

Guidelines

In arranging corporate internal controls, you may not be able to control all risks at the same time. To set up a system or review sufficiency of internal controls, you should start by assessing at which points the company may have high risks of not being able to achieve targets. You should control such points to be at an acceptable risk level.

A good control system should consist of a balance between flexibility in operations and well-conceived internal controls. You may use the following guidelines in setting up an internal control system:

- **Appropriate organization structure**: a good structure should focus on cross-checking. For example, in a property transaction, different people should be responsible for the authorization of transactions, information entry, and property management. In addition, each of the internal sectors shall have specific duties and responsibilities, with written business operating rules. These structures shall ensure that each transaction has verification procedures in authorization and information entry without causing overlapping in performing any of the functions and work.

- **Risk assessment approach**: This risk assessment approach shall apply to the entire organization and shall be able to identify which systems have high risk tendencies, the extent to which a given system may damage the company, the probability of risky events occurring, and the extent to which there is sufficient protection.

- **Provide a follow-up system**: Internal control and risk management shall be provided at least for every system that has a high tendency of risk together with high impact and high probability. The system should have a risk control policy together with an early warning indicator. In addition, it should set up good information compilation and report systems, including personnel to follow-up on the early warning system. Moreover, you should oversee operations to ensure that personnel consistently follow-up on the system.

- **Assessment**: After setting up the internal control and risk management systems, you should regularly go through self- assessment to ensure that they are still efficient and have been revised according to any circumstantial changes. In addition, the company should have an independent individual, who is free from internal influence control and to follow up the assessment and provide independent comment on the system.

- **Implementing suggestions**: If there are comments or inspections relating to mistakes found by the auditor or audit committee, the board shall pay attention to the comments and shall improve and correct them promptly. Besides, you should provide employees connected to the system with a convenient route to inform executives of any system deficiencies.

Additional guidelines can be found in the Handbook for directors produced and published by the SET, e.g., Guidelines for Directors Concerning Internal Control and Risk Management. In addition, you may use the evaluation form of sufficient internal control (available at www.sec.or.th) to be your guideline in self-evaluation.

3.3 Remuneration for directors and management

Concept

Remuneration for key executives and directors is an important tool in searching for persons with expertise and capability to fit in the positions, retaining personnel resources and motivating them to achieve targets. But setting remuneration may be connected transactions because directors or management have direct conflicts of interest on the matter. (However, such actions are not "connected transactions" as defined in SET's regulations.) Therefore, the remuneration given should be appropriate with the position, duty, responsibility and performance of each key executive and director. In addition, remuneration shall be considered or evaluated by others who supervise the given person, and shall not be done by the one who receives the remuneration himself.

"Remuneration" can be in form of salaries, premiums, gratuities, bonuses, employee stock option plans (ESOP), provident funds and other benefits.

Related rules

There is no specific rule in setting the amount of remuneration, but there is a process to consider remuneration, as follows:

The Public Company Act mentions only remuneration of directors, and does not include remuneration for executives. Important provisions are:

- The Act prohibits the firm from paying money or other assets to directors unless considered as remuneration, as specified in the articles of association of the company.
- If the articles of association of the company do not specify anything, remuneration shall be made upon receiving the approval of 2/3rd of the shareholders attending shareholder meetings.

SEC Announcements do not mention the method of determining remuneration, but related issues are:

- Issuing of employee stock option plans (ESOP), which will be explained more in the next item.

- Disclosure of information on total remuneration of directors, executives (which means the top five or equivalent), and numbers of those persons.

SET Regulations provide only advice, mentioned in the report of good governance, that remuneration of directors and executives shall be determined by independent individuals. A committee determining remuneration may also be established to perform such duties.

Guidelines to determine remuneration

Who should determine remuneration?

Remuneration for Directors: The directors perform as delegates of shareholders and for their best interests. Therefore, the best practice according to the Public Company Act is to propose remuneration for the directors in form of money for approval at the annual shareholder meetings, so that the shareholders are able to set remuneration suitable for the firm's circumstances. It is also a mechanism to encourage and enhance accountability by directors.

However, in practice, one may feel uncomfortable in proposing remuneration (regarded as personal information) to shareholders (regarded as public) to consider. You may choose another guideline as allowed by the Public Company Act to set a framework of remuneration for directors in the articles of association of the company. In this case, you do not propose "money" for shareholders' consideration, but rather a "rule".

In setting rules in the articles of association, you should ensure that such rules are flexible enough to be varied along with the board's performance. Simultaneously, it should be clear enough so that the board does not decide on its own remuneration; for example, it could set the exact amount of directors' fee or a gratuity for directors as a percentage of net profit. The amount of remuneration shall neither be set to the highest amount nor be paid by the resolution of the board, which may cause the board of Directors to determine its own remuneration. The said rule should be periodically reviewed.

Remuneration for executives: As a board member, you should either participate in determining this issue in the board meeting (the executive being assessed does not attend), or delegate the duty to a remuneration committee. For the best benefit of shareholders the board shall use this method in selecting and retaining quality executives, including developing and encouraging such persons in achieving their goals.

Form of remuneration

Remuneration can be divided into two parts:

- Fundamental remuneration (e.g., directors' fee and directors' salary) shall be determined in advance and shall reflect responsibility and risk taken for a given position (e.g., chairman of the board, audit committee, or executive).
- Rewards (such as bonus, gratuity for directors, ESOP) shall be varied dependent upon the value developed by the board of directors and approved by shareholders. It may be proposed at shareholder meetings for consideration the following year together with the annual report and assessment. Alternatively, it may initially be determined as a formula (e.g., bonuses for directors shall be x % of the net profit, and allow the board to determine the proportions among themselves).

Setting a part of the remuneration to be determined by the company's operational results has the advantage of ensuring good operational results. But if the said part was set at too high a proportion, it may motivate directors and executives to be concerned about the company's interest only in the short, rather than the long, term. Therefore, you should seek to balance both short- and long-term interests.

Moreover, you should consider the following factors in determining each kind of remuneration:

- Consistency with remuneration in the same industry

- Scope of responsibility
- Financial status of the company
- Consistency between a performance assessment scheme and achieving company targets.

3.4 Employee stock option plan (ESOP)

Concept

ESOP is an important method in creating a sense of ownership among directors and employees. It also motivates them to work for the long-term benefit of the company and develops co-interest between shareholders and business operation staff.

ESOP is considered as a kind of remuneration; therefore, the same concept and same determining guidelines apply as above. The cost of issuing ESOP will not show as an expense that affects company's profits and losses, but will increase the number of shares and result in a dilution of a company's shares. Therefore, you should use this plan as a motivation for directors and employees to achieve better operation results and to increase the value of the shares being diluted.

Related rules

The concept is regulated in the SEC notification on rights to buy newly-issued shares (either giving the right to buy immediately or issuing warrants). The process has to be approved by SEC under the following principles:

- **Approval**: In giving such right to directors and employees, shareholders are impacted from the dilution; consequently, it shall be approved at a shareholder meeting. The notice of meeting shall provide sufficient information to shareholders for their consideration (See: Rules about minimum information provided in handbook volume 3).

- **Approval for extraordinary rights:** In order to provide directors or employees with other rights other than warrants to increase their motivation, the board may give the rights to buy shares at a price lower than the current market price (directors or employees will promptly earn the balance between the discounted and marked prices; thus the impact on the long-term commitment of the staff is lessened). If the amount of shares offered at a discount price exceeds 5 (five) % of the total number of shares, the plan must be approved by a resolution under strict conditions, that is, at least 5% of the shareholders are entitled to reject the plan.

- **Distribution to directors:** Distribution of rights of each individual director shall be approved by a shareholder meeting to avoid a conflict of interest. Instruments or rights offered to directors shall not be different from those offered to employees (though the number of shares may vary).

- **Allocation of shares:** In order to protect shareholders in case more than 5 (five) % of the total shares issued are sold at a discount to a single person, the sale must be considered by an independent remuneration committee, and such a sale must be approved separately by a shareholder meeting. All remuneration of such persons shall be disclosed as information for consideration.

- **Expiration of rights:** Because the price of offered shares is set in advance and the stock prices fluctuate, such rights offers shall expire within five years to motivate directors and employees to improve operation results within that period.

- **Qualifications of issuing company:** The firm issuing shares shall follow the general regulations regarding increase of capital.

Guidelines to determine ESOP plans

As a director who proposed the ESOP plan, you should provide your comments to shareholders, but the plan still must be approved at a shareholders' meeting. Therefore, the following factors shall be considered:

- **Type of securities:** Most companies will select options to buy warrants over shares because, upon receiving shares, directors and employees will possibly lose their motivation and may sell those shares immediately. A prohibition to sell would mean that the employees take the risk of paying cash in advance without the option to sell the shares. Also, while waiting for directors or employees to exercise their rights, the shares shall be held by an intermediary. So there are problems in paying for and keeping the initially-issued shares. Warrants, on the other hand, are free from these obstacles.

- **Price of exercising rights:** The exercise price shall not be lower than the market price on the date of issuing the ESOP to motivate directors and employees to perform better. Giving rights with discounts shall be done only when necessary, e.g., if the company has no cash to pay salaries (in accounting practice, GAAP guidelines are being considered to consider such discounts as expense, similar to salary). It shall be explained clearly to shareholders that the lower the exercise right is, the stronger the impact from dilution will be to shareholders (the book value per share decreases).

- **Size of plan**: Where there are more right issues, more impact from dilution will follow. The plan's size depends on the following factors: number of employees entitled to receive shares; structure of compensation; type of business, etc. However, in general, the number of shares under the ESOP shall not exceed 5 (five) % of the paid-up shares of the company.

- **ESOP distribution** As it is part of remuneration, ESOP will follow the same guidelines that apply to paying remuneration for directors and executives. If different guidelines are used, the reasons and necessities shall be clearly explained to shareholders, especially to major shareholders. This process, therefore, must be considered carefully and independently, because it may bring about conflicts of personal interest.

Part 4

Consideration of Important Business Transactions

4.1 The sale and purchase of important assets
4.2 Connected transactions
4.3 Issuance of securities due to the increase of capital
4.4 Takeover

Part 4
Consideration for Important Business Transactions

4.1 The sale and purchase of important assets

Concept

Whether it is buying to expand the business, selling to decrease its size, searching for financial sources, or for other reasons, the sale and purchase of important assets affects the company and its shareholders. It may affect the type of remuneration, operational risks, and/or the company's financial status.

In business practice, you may consider the above issues as a business decision, which is management's duty to execute for the best interests of the company. Some issues are confidential. However, shareholders will be directly affected, so they should be involved in the decision-making process when the impact is significant. Even if the matter does not need to go to the level of a shareholder meeting, you, as a director, should make the decision by yourself rather than having the management decide the matter alone.

Related rules

The Public Company Act prescribes that the following sales, purchases or lease of businesses are considered essential parts of the company and shall only be granted upon by a vote of at least 3/4ths of the shareholders who attend the meeting and have the right to vote (unless otherwise requiring a larger majority as prescribed by the company's articles of association):

- The sale or transfer of the whole or important parts of the business of the company to other persons;
- The purchase or acceptance of the business of other firms by the company;
- The making, amending or terminating of contracts with respect to the granting of a lease of the whole or important parts of the business of the firm, assignment of management of the business of the company, or the amalgamation of the business with other persons with the purpose of profit and loss sharing.

Regulations of SET. The Exchange's regulations for listed companies and their affiliates have expanded and are more precise than those stated in the Public Company Act. These regulations give more importance to sale and purchase of assets, including the decision-making process involved in entering into such transactions, with actions to be taken being dependent upon the level of importance of the transaction. The main principles are:

- **Authorization of transactions**

    - Small transactions (less than 15% of transaction volume[2]), with a plan to issue securities as remuneration, are allowed. The company is only required to disclose information to SET (each firm may determine the level of internal authorization allowed).
    - Medium transactions (between 15% and 50% of transaction volume are allowed, but the company shall disclose information to SET and inform shareholders.
    - Large transactions (over 50% of transaction volume) shall be approved by shareholder meetings before they are carried out.

- **Evaluating the value of transactions.** In considering the transaction volume, it shall be evaluated accordingly. The listed company shall consider the volume of transactions, which the maximum volume shall be applied on the following bases:

    - Value of assets purchased, sold or transferred, vs. the value of assets shown in the consolidated balance sheet.
    - The total value of consideration paid or received, vs. the value of assets shown in the consolidated balance sheet.
    - The net after-tax profit derived from the assets purchased, sold or transferred, vs. net profit shown in the consolidated balance sheet.
    - Value of securities issued in exchange, vs. the value of securities already issued.

Guidelines to determine transactions

The sale and purchase of important assets or businesses affects business risks and company operations. To ensure that you have done your duty with sufficient care, and ensure that you will be safe from personal liability whether the project is successful or not, you should:

1) Pay attention to all details
2) Decide or propose your opinion to shareholders with sufficient supporting information, and
3) Record the information with your reasons for decisions or propose your opinion precisely to shareholders in the minutes of the shareholder meetings and in the notice for shareholder meetings.

Moreover, you should review the power of attorney given to your company's board and management to ensure that approval for the sale or purchase of important assets has been approved by the board.

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[2] Notification of the Board of Governors of the Stock Exchange of Thailand, Bor.Jor./Por. 21-00. Re: Disclosure of Information and Other Acts of Listed Companies Concerning the Acquisition and Disposition of Assets, 2004, Section 2, Clause 7.

Factors to be considered

In purchasing any property, issues about the possibility and appropriateness of the investment are inevitable, e.g., issues in marketing, production, procurement, management and finance. If you have to decide without proper information or based on assumptions, you should carefully consider the circumstances to ensure that those assumptions are reasonable, accurate, likely to be true, and are related to present facts.

In selling property, issues to be considered are similar to the above, but on the opposite side. You should consider which should be more useful for the business: selling property outright or maintaining it for company use.

However, another important issue to consider in the sale or purchase of property is that you should consider how the transaction would impact the entire business of the company. Some projects seem to be good but eventually may cause the company financial risk or otherwise negatively affect the entire business.

Besides the project or guidelines proposed by the management, you should look into any other options and see whether the project complies with the target or vision of the company, or whether it is best option for the circumstances at that time. Again, for these important issues, please do not forget to look at the minutes of the meeting to see if it covers the questions or answers, together with reasons to make the decision accurately. If you feel uncomfortable with it, you should request to record this in the report, which will be evidence to help you stay clear from liability.

4.2 Connected transactions

Concept

As mentioned in handbook volume 1, directors must act with care and a loyalty to preserve company interests. Having conflicts of interest with the company may obstruct a director from making decisions that are in the firm's best interests. As a result, other shareholders may claim indemnity from the director for unfair treatment.

Entering into a transaction where directors or executives are the decision-makers and have a conflict of interest may lead to an abuse of authority by exploiting investor's money for others' own interest and accordingly take advantage of investors. (The SET calls such activities "connected transactions"; in accounting they are referred to as "inter-transactions"). Thus, such transactions are mostly distrusted by investors -- especially in a company which has a weak checks-and-balances system, which will enable someone to control nearly all decisions. In such cases, directors who do not oversee or object to the transactions may be liable, together with the director who had the conflict of interest.

Therefore, as a director, you should always oversee the operation of transactions with care. You should conduct connected transactions only when:

- **Substance of the transactions is fair**. That means the transactions are reasonable and for the firm's best interests. Also, conditions of the transactions are the same as, or similar to, transactions on an arm's length basis.
- **Procedure of the transactions is fair**. That means transactions shall be approved by disinterested persons. The decision-making process shall be transparent, open and accompanied by sufficient disclosure of information.

In dealing with transactions, you should bear in mind that you are managing the shareholders' money. As you were trusted, you should manage the money in the best interest of the owners.

Rules relating to connected transactions

The Public Company Act: This Act contains both prohibitions and provisions that require permission to act, as follows:

- Companies are prohibited from granting loans or guarantees to, or purchasing promissory notes from, a director or a company in which a director holds 50% or more of the total number of shares, excluding welfare loans.

- Directors are prohibited from purchasing or selling property to the company or conducting any business with the company, regardless of whether it is in his own name or in the name of another, unless approved by the board of directors; and such purchase, sale or deal shall not bind the company.

- The director shall notify the company without delay about having an interest in any contract made by the company or when there is a change in the quantity of shares held by the company.

Regulations of SET provides broader definition on connected transaction than that stated in the Public Company Act. (The Public Company Act covered only transaction with directors.) The main regulatory principles are:

1. The term "connected person" means: Persons who may have a conflict of interest and may affect decisions among the directors or executives. This includes directors, members of executive committees who are department managers or higher, major shareholders and individuals related to such persons, including their close relatives or a company in which such a person is a director or major shareholder.

However, affiliates or associated companies of the company (where none of the connected persons involved holds more than 10 (ten) % of shares issued) are not connected because the interest of affiliates is a direct interest to the holding company and shall not cause a conflict of interest. Therefore, transactions with these companies are not under the umbrella of this provision.

2. Categories of connected transactions: These cover all transactions between a company and connected persons. However, provisions concerning each category of the transactions differ, depending on the "usual" course of transactions, as follows:

- **Purchasing or selling of goods or services in the ordinary and usual course of business, including supporting ordinary business**. Management is able to operate transactions which comply with normal commercial terms or which contain property with underlying value.

- **Renting or leasing of immovable property not exceeding three years**. Transactions can be entered into with the approval of the board of directors, despite being large transactions.

- **An assets or services transaction**. These are permitted under the conditions set out in item 3 below of the shareholders' protection scheme (below).

- **A financial assistance transaction**. In providing financial assistance in the ordinary course of business, the same rule as the above on assets or services transactions should be followed. However, if lending money to any party whom the company generally should not lend or otherwise provide financial assistance since such actions may cause unfairness to general shareholders, the firm should follow a more intensive rule, with prior approval from shareholder meetings. This includes lending money to major shareholders, director, executives or a company that such person holds higher ratio of shares than the company.

3. Shareholders' protection schemes: These are based on the principle that a person with a conflict of interest should not approve the transaction concerned. The level of approval depends on the value of the transaction, which is divided into three categories:

- **Exemption level**: Management is allowed to make decisions at its own discretion. Most are small transactions of not more than THB 1 million or 0.03% of net tangible assets (NTA), whichever is higher. The company shall gather the information to be disclosed in the annual report.

- **Level requiring board of directors' approval and disclosure**: Value of transactions between THB1 and 20 million, or between 0.03% and 3% of NTA, whichever is higher. However, the scheme will be stricter in case of financial assistance provided to a party it generally should not provide such assistance. Then, the company needs the board approval and disclosure when the amount is up to THB100 million or 3% of NTA, whichever is lower, otherwise approval from shareholders is required.

- **Level requiring shareholders' approval with opinion of financial advisor** (unless otherwise granted by SET): Transactions valued at more than the above cases require a resolution of not less than 3/4ths of the total number of votes of the shareholders with voting rights attending the meeting. Persons with conflict of interests shall not have the right to vote.

  In addition, there shall be comments from the board of directors justifying and outlining the company's benefits in proposing the transaction for the shareholders' approval. Any audit committee members or any director who has a different point of view shall inform shareholders for their consideration.

4. Guidelines to consider approval of connected transactions: Whether you are a member of the audit committee or a general director, you should approve a connected transaction only if you have considered the following issues:

- **Ask yourself, in the same situation, whether or not you would enter into the transaction with one who is not a connected person**. If the answer is "no", then you should not approve the company's proposed deal with the connected person (e.g., the company does not operate a loan business and the company will reject the application if others want to borrow. As a result, the company should not provide a loan for a connected person that is outside the ordinary course of business of the company.).

- **If you think that you should still enter into the transaction, you should look at the transaction's details, seeing the extent to which it is reasonable and beneficial for the company**; for example:

  - **Proposal to purchase land from a connected person**. If the land has no potential use for the firm, you should not approve it, because this will increase the non-earning assets of the company unnecessarily.

  - **Request for loan or for guarantee from a connected person**. You should consider (1) the probability of receiving return payments, source of funds and extent of potential risk; (2) factors that may affect cash flow, obligations and financial risk of the company after giving such loan or guarantee, and (3) the extent to which the company has guidelines to pursue and demand repayment, possibility of receiving repayment from the person in question. If the company would not seek repayment from that person, then you should not approve the loan.

- **After considering the two issues above, you should consider whether or not the price and other conditions are reasonable and appropriate**. You may:

- Compare the purchase or sale (or similar transactions) with a third party.

- If there is no market price for the sale or purchase, you should refer to an opinion from an expert in that area (e.g., financial advisors for financial assets or property assessor for land purchases).

- In loan transactions, you should review the cost of capital of the guaranteeing company and the risk of not receiving repayment on schedule in order to fix the interest rate. Setting a high interest rate would be useless if the borrower has no capacity, or no intention, to repay.

The above guidelines shall be used for situations where you are the one approving the transaction and require shareholders approval. Furthermore, as a director, you should propose your comments and recommendation to the meeting. You should review the Meeting Notice before it is sent out to ensure that it contains sufficient information for shareholders to decide (details are in handbook volume 3).

Besides the connected transactions explained above, a director may have other actions causing a conflict of interest, so the director may not perform his duty with loyalty and care to preserve the interests of the company. For example, the director may:

- Operate a business which competes with the company (including becoming a director in a firm in a similar type of business), which Section 86 of the Public Company Act prohibits, unless he notifies a shareholder meeting prior to the resolution for his appointment.

- Invest in a business similar to the company's by using the opportunity or information of the company for his own interest.

These transactions are mostly individual breaches of duty of the director and should not be supported. The board of directors is responsible for determining the business strategies, including seeking and maintaining opportunities to expand the company business.

4.3 Issuing securities from capital increases

Concept

Fund is like the main blood vessel of the company and keeps the business going. A high ratio of shareholders' equity will reduce financial risk and enable the company to reduce borrowing costs. This is one of the factors that benefits and brings stability to the company.

However, capital increases bring about additional shares (which means less value per share), so as a director, you want to create the highest value for the business and shareholders as possible. You should consider why the company needs extra money, the likely profits/benefits from the project, possible risks to the company and to the shareholders, and alternative sources of funds. Moreover, issuing shares from a capital increase will dilute shareholders' value (e.g., net earnings per share, book value per share, or voting right per share). Therefore, you should only issue more shares if:

- The reasons for needing additional money The objectives of the capital increase and plans for utilizing proceeds received from the capital increase are clear and are likely to increase future profits as well as add value to the company.

- The price offered for sale shall not be less than fair value, so that the value per share of owner's equity will not be lowered unnecessarily.

- There is proper allocation and it shall not be a channel for anyone to obtain control over the company, unless for the firm's interest, with shareholders' prior approval, and if the information is completely disclosed and the stakeholders do not exercise their voting rights.

Related rules

The offer of securities for sale issued for a capital increase, whether it be shares, warrants or convertible debentures, shall be approved by a shareholder meeting. It shall also follow the Securities and Exchange Act. The rules of the SEC relating to authorization and information disclosure differ according to the type of sale offering. The main purposes of such rules are to:

- **Ensure fairness to current shareholders** who are impacted from the increase of capital, by allowing such persons to decide with sufficient information to exercise voting rights. The rule also aims to protect a rights offering which causes unfair dilution.

- **Ensure the subscription of shares issued under the increase of capital to investors** (with sufficient information) for investment. Moreover, rules of authorization are used to check or motivate a public company to conduct good CG regularly. These rules emphasize fairness between shareholders and disclosure of information.

- **Ensure that the next stage of shareholders** shall obtain fairness and sufficient information. (The firm shall comply with SEC rules governing information disclosure and SET's regulations governing information disclosure and maintaining the status of listed companies).

Criteria for deciding what kind of security to offer

Both issuing shares for a capital increase and determining the method of allotment require approval from a shareholder meeting. As a director, you have the duty to comment on the suitability of the capital increase. Capital increases may be implemented in various types. Consider the following points:

- **Kind of securities:** shares, warrants, or convertible debentures
- **Type of offering**: should they be sold to present shareholders and/or the public, or offered by private placement to strategic partners, institutional investors, or other persons.
- **Offering price:** should reflect fair value of other shares or securities to be fair to both present and new shareholders.

Some different factors to determine each type of offering are as follows:

Rights issue

In a rights issue, existing shareholders are given rights to buy additional company shares in proportion to the number of shares they already hold. If all shareholders exercise their rights it will not affect earnings per share (when calculated from the total shares held after the execution of the rights issue) or the relative voting rights of the shareholders. Rights offerings do not require approval from the SEC. But you should consider the following issues:

- **Price of a rights issue:** The exercise price on the rights is normally set at lower than the market price. The shareholders may consider it as a reward, as there may be a favorable price difference between the exercise and market prices.

  The effect, however, may only be psychological. Setting the exercise price lower than market price may cause share value and earnings per share to decrease. There thus may be no change in the value of the holdings of shareholders exercising the rights. Setting the exercise price below the market price is intended to give the shareholders an incentive to exercise their rights so that the company can raise the capital it seeks. Shareholders who are unable to exercise the right may incur a loss if there is a decrease in the post-exercise value of the shares.

- **Allotment of shares remaining due to unexercised rights:** Some shareholders may not be able to exercise their rights (perhaps due to a lack of sufficient funds). The remaining shares should be dealt with in the following manner. Unlike other shareholder rights, a rights issue is a type of special interest (without cost from the decrease in value of original shares being held) that provides shareholders the benefit of the difference between the market value and exercise price. Thus the shares allotment must be conducted by a shareholder resolution. To be fair to shareholders you should follow these principles:

  - **Allow all shareholders to subscribe to the remaining shares**. They should be informed of their subscription rights when the rights are first exercised. (This type of offer is not subject to SEC approval or registration requirements.)

  - **The board of directors may offer the shares to others but the offering price must not be less than the fair market**

value of the shares. This is to prevent an inappropriate share allocation. This offering is subject to SEC approval and registration requirements.

- **Resolutions for a capital increase and remaining shares allotment should not be combined**. They should be done separately so that shareholders can vote separately on each resolution.

Public offering

This may cause authorization expenses (e.g., for financial consultants and disclosing information according to SEC rules) including for appointing underwriters. But it will gain additional investors, mostly at market price, which will help maintain share value for the present shareholders.

Most companies encounter difficulty in complying with the rules. But over time, however, this problem will decrease. If the firm already has good information disclosure, this will help the company's offering to be rapidly subscribed to.

Wide-ranging investors typically subscribe to a public offering. So to ensure fair share allotment and no conflicts of interest between executives and underwriters, the rule prohibits the offer to any directors, executives, and major shareholders, including persons relating to the underwriting firm, unless the shares are separate from the subscription.

Private placement

Private placement mostly can be completed quickly, since it is agreed within the group and information disclosure is not required according to the SEC rules. However, you should consider the following issues:

- **Price**: If the placement is at a price lower than the market, it will cause dilution, resulting in shareholder damage. In determining the price, you should consider whether the chosen person would benefit the company enough to cover the shareholders' losses.

  According to the SEC rules, private placement at a price lower than the market (e.g., less than 90% of market price) should be done only when the firm is being rehabilitated. There should be sufficient disclosure in the notice of the shareholder meeting and if 10 (ten) % of shareholders vote against the motion, it shall be rejected.

- **Amount**: A large amount of private placement may impact the control over the business, and will decrease voting rights of present shareholders. Therefore, shareholders should be informed about such an impact in the resolution.

However, if the placement causes buyers to cross a 25%, 50% or 75% trigger point, which are where changes in control over the essential business occur, takeover rules shall be observed.

- **Offer recipients**: You should avoid private placement to major shareholders, directors, executives and related persons because the shareholders may be uncertain of the fairness and transparency. If you do, you should follow the rules on connected transactions.

Offer of warrants

A warrant is an instrument that grants the right to purchase shares in the future and is useful in raising capital from diverse sources. Issuing a warrant entails simultaneously issuing two kinds of securities. The first is **shares**, which shall be considered the same as the above offer (the price of the offer shall be equal to warrant price), and the second is **warrant**s. There are several issues to be considered as follows:

- **Issuing of warrants will create obligations or costs to the company**. A warrant grants the right to purchase shares at a certain price. The right may be exercised only within the duration of warrant. It means that:

  - **If the market price is lower than the warrant price**, the investors will not exercise their right; therefore, the firm will be unable to increase capital (that means the company receives nothing).

  - **If the market price is higher than the warrant price**, the investors will exercise their rights, but the company will have lost the opportunity to offer shares in a capital increase at a higher price (for a given amount of capital increase, the number of shares issued will be less than in the case of warrants and dilution of value of the original shares will accordingly be less).

  - **Issuing warrants will intensify uncertainty in the capital increase**. As the increase of capital that supports the warrants depends on market conditions and the exercise of warrant holders' rights, it is uncertain as to whether and when the warrant holders shall exercise their rights. As a result, the firm may have financial planning difficulties. On the other hand, investors will not know as to when warrant rights would be exercised and how such actions would impact the number of shares and price/earning ratio.

    Therefore, you should approve the issuance of warrants only when you consider that the company or shareholders will obtain benefits exceeding the cost (e.g., issued together with debentures as a gift to enable the company to borrow at a lower cost).

It should be noted that issuing warrants to shareholders at a low price may be done in lieu of paying dividends (especially when the firm is short of money or has inadequately retained earnings). In addition, it should be considered that the warrants are issued by using future interest of the firm and shareholders paid to present shareholders. Therefore, it should be done only when necessary and concern about the dilution effect.

Summary of five guidelines of good governance for increasing capital

If you decide to increase capital, then you should consider shareholders impact as follows:

1. **Select type of security**, e.g., shares or warrants. Consider impacts from dilution and long-term obligations.
2. **Conditions of issuance,** e.g., price, amount and duration. You should set a price to be in line with the capital required and consider shareholders impact.
3. **Ensure fairness among shareholders**. If you offer shares at lower than the market price, then grant rights to present shareholders first because they will be directly impacted.
4. **Spend money as planned**. You should plan for spending and set a follow-up system to maintain the spending objectives. For example, the management shall report operation progress periodically and find solution if anything deviates from the plan.
5. **Provide sufficient disclosure to shareholders**. Details of the objectives and spending plans should be outlined in the meeting notice (e.g., in the annual report).

4.4 Takeover

Concept

The company that you are director of may relate to a takeover by taking over other companies or becoming a takeover target. Changing major shareholders can bring about significant differences in the company’s controlling direction and risks. Therefore, you should consider carefully the best interests of shareholders. The shareholders should also participate in determining if the operation creates a large impact to the firm or to shareholders.

Related rules

The Public Company Act prescribes a rule of merger and acquisition that transactions involved purchasing or selling the whole or major part of the business must be approved at a shareholders’ meeting by at least 3/4 of votes cast. However, a change in the major shareholders is not regulated in the Act.

The Securities and Exchange Act and SEC Notifications contain rules for acquiring securities for takeovers, and these apply when there are changes in control over public companies, especially listed companies. The main principles are:

- **Information disclosure:** Investors shall be informed about the possibilities of changes of company control. Thus, anyone holding securities shall report the acquisition or disposition of shares or convertible securities (i.e., convertible debentures and warrants) whenever such purchases/sales causes the total shares held by a given party to exceed 5%, or any multiple of 5%, of total shares issued . If you are not dealing with such purchases or sales, you should use the above report (or oversee the making of such reports) to analyze the possible impact on company operations.

- **Equitable treatment of shareholders:** As changing of major shareholders will affect a firm's operation, other shareholders may be impacted. SEC Notifications therefore prescribe that any person who acquires shares to a point that may result in a change of management (that is, 25%, 50% and 75% of shares with voting rights), shall make a tender offer for the purchase of shares and convertible securities from all securities holders. The rule is intended to be an exit for present shareholders who wish to sell shares at a fair price. The rule does not apply to solving a financial crisis, when the transaction is approved by the shareholders, or is made exempt by other rules.

- **Comment on tender offers:** When there is a tender offer to the company, as a director, you have a duty to give comment to the shareholders for their consideration as to whether or not they shall sell their shares according to the tender offer. This is because you know the company's information well and are duty-bound to preserve the shareholders' interests. In giving such comments, you should focus on the best interests of shareholders and have an independent financial advisor provide opinions on the price.

SET Regulations concerning the acquisition and disposition of assets. When the company acquires assets, such the other firm's securities and the transaction size is concerned as a substantial significant, the company must get shareholders' approval. For moderate significant transaction, shareholders' approval is not required but the company must obtain the board's approval and disclose to the public. (please see more details in part 4.1).

Guidelines

In general, a takeover or post-takeover operation has many complicated issues. It, therefore, requires assistance from a legal or financial advisor. The following points of view shall be considered:

If your firm takes over other companies: The transaction is mostly considered as an expansion or purchase of general assets. If the firm you intend to take over is listed, you shall ensure your company or your takeover target company complies with the Securities and Exchange Act rules.

If your company may be taken over: Such activities may be undesirable to some people, unless the firm is seeking a strategic partner to expand its business or solve financial problems. In the latter case, such transactions are mostly approved by the company or major shareholders, and are known as friendly takeovers.

However, a takeover will arise as soon as there is someone who sees the opportunity to create a value of the business higher than the current value of shares that he or she purchased. Therefore, the said takeover (although it may bring about changes to the board of directors, including you as a director) may benefit shareholders as a whole. You, as a shareholders’ delegate with the duty to preserve the firm and shareholders’ best interests, should not obstruct the takeover. If you seek to protect the firm from such a take over, you should create the highest value for your business and shareholders at all times so that your company is less likely to be a takeover target.

Part 5

Shareholder Meetings

Part 5
Shareholder Meetings

Concept

Although minority shareholders are more interested in remuneration than voting rights at general shareholder meetings, they are nevertheless the firms' owners who **should have rights to participate in decisions concerning fundamental issues and have the right to follow-up, examine or assess your operational results** because you are also their delegate in operating the business. Shareholders exercise these rights through shareholder meetings.

To respect shareholders**'** rights to **participate in decisions concerning fundamental issues**, the whole meeting process is designed to promote such participation, as follows:

- Shareholders shall have the right to participate in, and be sufficiently informed about, decisions concerning "fundamental issues" on the agenda of general shareholder meetings. Some issues that require approval from general shareholder meetings are mandatory by law; some are defined in the articles of association of the company. Others are issues that shall be raised by the board of directors for additional approval at general shareholder meetings.

- Shareholders should be notified about general shareholder meetings with sufficient and timely information so that they can adequately prepare.

- Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia. Therefore, notices convening the meeting shall contain sufficient information for the shareholders to determine if they should participate in person or by delegating a proxy with voting policies. Each shareholder must be furnished with a proxy form, to use if he wishes to name a director who shall vote per the shareholders' instructions.

- Shareholders should be furnished with sufficient and timely information concerning the convenient location, date, time and agenda of general meetings to attend and vote independently.

- Counting of voting rights shall be accurate and complete with appropriate examiners.

- A record of the meeting shall be accurate, complete, and done within a short period so that shareholders can examine it (the Public Company Act prescribes a period of not over 14 days).

In addition, to respect the shareholders' right to follow-up, examine or assess the operation of the board in shareholder meetings:

- The board should give an opportunity for shareholders to place an issue on the general meetings' agenda and to propose resolutions, as well as a guideline for the board to be followed. In addition, shareholders shall be able to propose names of persons to be selected as directors.

- The shareholders, at their best endeavor, shall have the opportunity to ask questions of the board and shall have the right to obtain clear answers on the issues.

Related rules and guidelines

In most cases, the Public Company Act shall be applied. There are some additional rules in SEC Notifications and SET Regulations. However, those rules are already explained on specific matters in this handbook (e.g., on issuing securities or connected transactions). For more details, please see handbook volume 3.

Part 6

The Sale or Purchase of Securities by Directors
(Insider Trading)

Part 6
The Sale or Purchase of Securities by Directors
(Insider Trading)

Concept

Unlike director guidelines, insider trading is a personal matter that is a direct duty and is unrelated to the other directors.

The rule exists because a director is in the position of knowing useful information that would give him an advantage over general investors. You should avoid selling or purchasing securities of the firm where you are a director or an executive. If you do sell or purchase, be careful not to use undisclosed information to your advantage, as this may be illegal. Furthermore, after the purchase or sale, you should report the transactions as prescribed by rule, to inform general investors.

Related rules

The Public Company Act prescribes that a director shall report to the company of changes in the director's holdings of securities issued by the firm without delay.

The Securities and Exchange Act stipulates rules on the purchase or sale of securities which may involve the directors as follows:

- Report on the purchase or sale of securities of the top five directors and executives. You have a duty to report any purchase or sale of securities, warrants or convertible debentures in which you, your spouse or minor children hold in the firm of which you are a director or manager. The first report (Form 59-1) shall be submitted when you first hold the position. After that you shall report every transaction within three working days from the purchasing or selling date (Form 59-2).

  The report's objective is **not** to be used by the SEC to examine whether you have used insider information or not. You should purchase or sell securities legally by not breaching your duty or using inside information. The report, submitted by insiders of the firm, is inform investors about how someone very knowledgeable about the company thinks about stock price, especially when many directors or management purchase or sell in the same direction. Therefore, up-to-date and rapid information is considered essential for investors.

- Report of changes in securities holding of major investors (Form 246-2). Since major shareholders greatly influence policy and operations of the company, the Public Company Act prescribes that securities holders shall report the acquisition or disposition of shares and convertible shares (convertible debenture and warrants) whenever such purchase or sale of the securities cause the total shares held by any one person or consortium to cross 5%, or any multiple thereof, of the total number of securities outstanding. The purpose is to remind investors of the possibility of a change in company control.

- Prohibition of purchasing or selling by using inside information. Having inside information will allow you to know better than other investors how appropriate the securities price is. Such purchases or sales are therefore unfair to other investors, and the Securities and Exchange Act designates such acts as criminal offences.

Guidelines

What is important inside information?

This is information which has not been publicly released by the SEC or the SET and which may impact decisions to purchase or sell securities, or affect securities prices, such as:

- Operational results and financial status of the firm in each period (e.g., quarterly and annual financial statements, especially when the figure is significantly different from the last period's data or from investors' expectations).

- Important transactions (e.g., when entering into a joint venture agreement on a new business, negotiating a takeover, negotiating the sale of company shares, or when the firm is sued for damages).

- Circumstances that affect business operations or financial conditions of the firm (e.g., resignation of directors, cessation of operations in whole or in part, or damages from fire or natural disaster).

Protection scheme in using inside information

If a rumor that the firms' directors or management have used inside information circulated, it would have a major repercussion on the company's reputation and creditability. Therefore, you should ensure your company has additional schemes to protect inside information from being used. For example,

- The firm's articles of association should prohibit directors and management from buying or selling securities within one month before financial statements are due to be released publicly.

- Request the directors and management to disclose the names of security companies they use, including account numbers, so that the firm shall be able to contact them if necessary.

- Consistently keep reports of the purchase or sale of securities of directors and management. The company secretary may announce the report at board meetings, so that everyone shall be careful and shall follow-up the transactions among the directors themselves.

- Maintain a good confidential protection scheme of the undisclosed information to protect it from being revealed.

- Provide a rapid and accurate information disclosure (including news) system to the SET to reduce unnecessary “inside” information.

Submission of report on the purchase or sale of securities

Some directors may understand that they are duty-bound to report to the firm their purchase or sale of the company’s securities according to the Public Company Act, so they assume that the firm will accordingly send the report to the SEC. To avoid any mistakes, you may submit the report directly to the SEC or via facsimile in advance to ensure that investors obtain updated and timely information.

Appendix

Rules for the Submission of Reports on Information Disclosure

Appendix
SEC Rules governing submitting reports on information disclosure

Report	Date of submission
Section 56: Report concerning financial conditions and the business operation.	
1. Financial statement: Starting from the next financial statement period shown in filing form or in the draft of prospectus.	
Quarterly financial statement	Within 45 days from the last date of the quarter.
Annual financial statement	There are two alternatives: 1) submit the fourth quarter financial statements (reviewed) within 45 days from the last date of the fourth quarter and submit annual financial statement (audited) within three months from the last date of the accounting period, or 2) submit annual financial statements (audited) within 60 days of the last date of the accounting period.
2. Form 56-1 (disclosure of company information)	Within three months from the last date of accounting period.
3. Form 56-2 (annual report) and meeting notice	Documents shall be submitted to all shareholders within 110 days from the last date of the accounting period and copies shall be sent to the SEC within the next working day after the documents are sent to shareholders.
Section 57 : Report of incidents occurring	
Report any incidents which may negatively impact the rights and interests of securities holders or securities prices	Report immediately according to SET regulations.
Section 59 : Report of securities being held by management and auditors (applies only to companies issuing securities or convertible securities)	
1. Form 59-1: First report	Within 30 days from the date of closing the offer for sales of securities or within 30 days from the date of appointment of a new manager or new auditor
2.Form 59-2: Subsequent reports	Within three days from the date of securities purchase or sale
Section 81 : Report of the results of sale of securities	
1. Form 81-1 (Report of results	Within 45 days from the closing date of the offer

Report	Date of submission
of securities sales)	for sale.
2. Form 81-2 (Report of utilizing rights on convertible securities)	Within 45 days from each deadline for utilizing rights or, if rights may be utilized continuously, within 15 days from the last date of each month wherein that the rights have been utilized (in case that the rights shall be applied continuously).

Remarks

1. The following cases do not require quarterly financial statements:

(1) The firm sells debentures to institutional investors which had already registered for restrictions to transfer;

(2) The firm has no securities listed on the SET and does not issue debentures;

(3) Trading of the company's securities have been suspended (SP) by SET as the firm is being rehabilitated under bankruptcy law.

For cases (2) and (3), the firm must arrange a second quarter financial report to be submitted to SEC together with an explanation of financial conditions and operation results.

2. When any of the following cases occur, the duty according to section 56 shall terminate:

(1) When there is liquidation for dissolution;

(2) When the firm is not able to sell the securities within the authorized period;

(3) When the company has satisfied its securities obligations completely, excluding convertible securities;

(4) When the certificate of derivative rights or other convertible debentures has expired and no one claims the rights;

(5) The firm has voluntarily withdrawn shares from being listed with SET and has made an offer to purchase shares from all shareholders according to SET's regulations. After the purchase offer, there are other shareholders, who did not make the offer for purchase and are not related persons, holding a total of not more than 5% of the total issued shares.;

(6) The company has a total of less than 100 securities holders of all types and the company has no securities listed with SET;

(7) When the firm has been ordered into permanent receivership by a court and has no securities listed with SET;

(8) When the firm has been ordered to suspend business operations by a legally-empowered officer or government agency and the firm has no listed securities registered with SET;

However, as soon as the company finishes the duty to report according to Section 56, the management and the auditors of the firm, which issued the securities shall terminate the duty to report according to Section 59 accordingly.

Director's Handbook
Volume 3

"… A strong commitment of directors to efficiently perform their duties and responsibilities is good, but whether this will create value on the business or not depends on the 'perception' of shareholders, both existing and future shareholders, whether they perceive this commitment or not …"

The handbook volumes 1 and 2 focus on the roles of directors in the supervision and oversight of the company and its management to run the business activities and affairs and achieve the company's goals in the best interests of shareholders. Directors are appointed by shareholders as their representatives. You as a director will, therefore, have a vital role of establishing sound practices regarding equitable treatment among all shareholders and respect for shareholders' rights.

This handbook explains the basic rights of shareholders that directors should know, and practice guidelines for convening a shareholders' meeting — an important channel for shareholders in exercising their rights — in order to achieve transparency, confidence, and conformity with good corporate governance.

This handbook is part of the Directors' Handbook, which consists of three volumes:

Volume 1	**Roles, duties and responsibilities of directors and board of directors**
Volume 2	**Practice guidelines for directors**
Volume 3	**Rights and equitable treatment of shareholders and shareholder meetings**

This handbook is not intended to focus on the details of statutory and regulatory requirements. References to some rules and regulations are given for ease of your understanding only. Therefore, you should get acquainted with the details of any relevant rules and regulations or designate staff to stay abreast of the constantly changing laws and regulations, and to ensure full understanding and compliance within the organization.

Finally, this handbook will help you achieve the expectations of shareholders by effectively performing your duties and responsibilities in the best interests of the company and shareholders.

Director's Handbook

Volume 3

Rights and equitable treatment of shareholders and shareholder meetings

The office of Securities and Exchange Commission

January 2007

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Appendix Shareholder Meetings Case Studies

Part 1

Rights of Shareholders: General Principles

Part 1 Rights of Shareholders: General Principles

Some say "Don't talk about rights of shareholders; the investors are eager for profits only. Few investors attend shareholder meetings. So, time and expenses spent for shareholder meetings should be used for other benefits."

If you have the same feeling, don't worry, you aren't alone! When a company operates smoothly and the board of directors supervises and oversees matters efficiently, most shareholders will have trust and confidence, and will not be eager to vote. However, a proper shareholders protection mechanism is essential to ensure the accountability of directors to shareholders, and the effectiveness of measures for shareholders to monitor whether the board of directors and management do their best in performing their duties. If they have poor results, leading to a share value drop, some shareholders might, of course, step in to protect their investments, instead of selling their shares with a loss. Respect for shareholders' rights is, therefore, crucial for corporate governance. Indeed, it is a must. But whether shareholders will exercise their rights is not an issue that you as a Director have to be responsible for.

The rights of shareholders are not limited only to the voting rights, but also include others, as follows:

- The right to be counted as a shareholder, for example, the ability to record share transfers or share pledges in a shareholders registry book, a right to inspect shareholder records, etc;
- The right to receive full and fair returns without inequitable treatment from any group of shareholders;
- The right to obtain sufficient and timely information in monitoring the company's operations and performance;
- The right to participate in decision-making for material matters;
- The right to inspect the management of the board of directors, who are representatives of shareholders;
- The right to obtain a redress or a rectification for any violations of their rights.

Various rights of shareholders are established by law, e.g., to sue for damages, attend shareholder meetings, or receive dividends. You could, in practice, foster and strengthen conformity with such minimum statutory requirements so that all shareholders have equitable treatment and are able to exercise their rights conveniently and effectively.

The handbook volume 2 addresses the duties and responsibilities of directors concerning disclosure of information, determination of business directions and policies, and connected transactions for purposes of full and fair returns to shareholders. This handbook volume 3 will focus on the right to participate in decision-making for material matters and review the performance of the board of directors. These rights are always involved where the shareholder meetings are concerned.

Part 2

Guidelines for Convening Shareholder Meetings

2.1 Principles
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2.3 Drawing up agendas
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2.5 Notice of meeting
2.6 Proxies
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2.8 Votes
2.9 Conducting meetings
2.10 Preparing minutes of shareholder meetings

Part 2 Guidelines for Convening Shareholder Meetings

2.1 Principles

Shareholder meetings are the right place and time for shareholders to inquire about and review the operations and performance of the company. You will, therefore, play an important role in encouraging such activities, starting from drawing up an agenda, providing sufficient information to shareholders for their decision-making, conducting transparent shareholder meetings, and allowing inquiries from shareholders to provide them with transparency and fairness.

Effective shareholder meetings should:

- Encourage shareholders to participate in decision-making of material matters, and raising matters of concern at the meeting for decision-making.
- Provide sufficient information, both in the meeting notice and during the meeting, to shareholders for their proper decision-making.
- Count votes and keep voting records in an accurate and proper manner.

2.2 Calling meetings

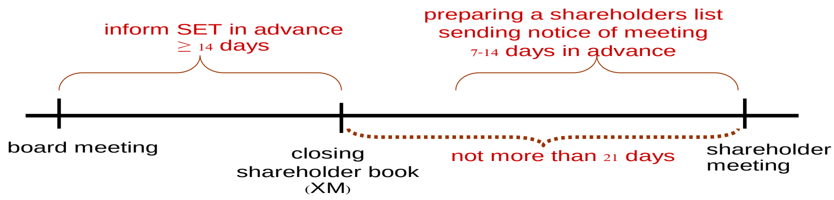
Relevant rules and practice guidelines

There are two types of shareholder meetings — an annual general meeting (AGM) and an extraordinary general meeting (EGM) — governed by the Public Company Act, with significant statutory requirements as follows:

- **AGM:** The board of directors must hold an annual shareholder meeting within four months from the end of an accounting period to report the performance of a company to shareholders, allowing any inquiries from shareholders, and, as in general practice, approval of financial statements, fixing directors' remuneration, appointing and/or replacing directors, appointing auditors and fixing their remunerations as well as considering payment of dividends.

- **EGM:** Apart from the AGM, the board of directors may convene an interim meeting called "an extraordinary general meeting" to discuss any other matter proposed for approval by the shareholders. In addition, shareholders (holding at least 20% of the issued shares, or 25 persons holding at least 10% of the issued shares) may request in writing the board of directors a call for an EGM meeting by specifying the matters to be considered. You should ensure that the board of directors proceeds to call for the EGM as requested by shareholders.

The board of directors has a duty to call a shareholder meeting. All shareholders have the right to attend the meeting and vote. However, for the convenience in disseminating the meeting notice and inspecting the list of shareholders entitled to attend the meeting, a company may announce the closing date of its shareholder book prior to the meeting (but securities trading can be done as usual) in order to ascertain the list of shareholders and meet a statutory timeframe as shown below.



2.3 Drawing up agendas

The agenda is a list of matters that will be discussed at the meeting of shareholders. Basic principles for drawing up the agenda are as follows:

- Significant matters should be brought up for decision-making by the shareholders;
- Each matter should be listed and separated for discussion and voting (no discussion and voting on all matters as package).
- Shareholders should be able to propose any matters or items to the agenda prior to the meeting.

Relevant rules

Public Company Act: This law sets forth, as minimum statutory requirements, matters to be approved at shareholder meetings, e.g., financial statements, appointment of directors and auditors, dividend payments (except for interim dividend payments to be approved at a board of directors meeting when profits occur), increases and decreases of company’s capital, public offerings, or amendments of a firm’s business objectives and articles of association, or corporate mergers.

SEC and SET Rules and Regulations: These contain additional requirements on matters that require approval by shareholder meetings, for example, connected transactions, sales and purchases of material assets, or corporate takeovers by partial tender offers.

Practice guidelines

Matters for discussion by shareholders: Apart from those specified by law, you may propose any other matter materially affecting shareholders’ rights for approval by shareholders. For instance, matters relating to new business operations or investments that change the business risks of the company, even though such proposed business has already been incorporated in the broad scopes of publicly-registered business objectives of the company. You may choose to propose such additional significant matters for discussion at shareholder meetings on an occasional basis, or, for clarity, to amend the company’s articles of association to incorporate such significant matters for approval by shareholder meetings.

Matters added into agenda by shareholders: The Public Company Act does not set forth the shareholders’ right to add matters into an agenda prior to a shareholder meeting. The board of directors may, by voluntary action, establish a channel to do so to increase the opportunity for shareholders to monitor the company's business management, and to participate in decision-making in material matters. (The law requires that a group of shareholders holding at least one-third of all paid-up issued shares may, at the shareholder meeting, request additional matters in an agenda. However, it is problematic in practice as shareholders will not know in advance of the exercising of such right, and therefore may neither attend the meeting nor give a proxy to vote on their behalf. Thus, this practice should be avoided.

Proposing additional matters to the agenda by shareholders is quite new in Thailand, but is a basic principle in the laws of other countries. Generally, shareholders may, under our current laws and regulations, seek any additional information or clarification at the shareholder meeting. The right to inquire ensures a better understanding by shareholders. The right to add additional matters to the agenda ensures that the resolutions cover all the issues that shareholders consider important. The board of directors has, by law, the obligation to fully comply with shareholders' resolutions. Thus, shareholders should not wait for matters to be proposed by the board of directors, but should take the initiative. The same concept should also apply to directors, i.e., directors should not wait for matters proposed by the management in the agenda for board meetings only. You are able to propose any matters that are in the best interests of the company for discussions at the meetings.

At present, shareholders seldom attend shareholder meetings. Making it possible to propose additional matters will, in and of itself, not increase the attendance of shareholders at the meetings. Moreover, exercising such rights may be wrongly used to disturb shareholder meetings, causing a waste of time at the meeting if the board of directors is obliged to accept such a request.

From research of foreign sample case studies, it was found that although many countries do give the right to put additional matters on the agenda, most shareholders do not exercise their rights. However, it makes them feel confident to exercise such rights when necessary. This can be compared to driving a good car: although you have a safe driving record, you still buy auto insurance. To find a balance between granting rights to shareholders and ensuring the effectiveness of the meetings, the following is suggested:

- Announce the date of the meeting well in advance (e.g., announcing the AGM at the beginning of the year), and a time frame for any matters proposed by shareholders, together with details and purposes of such proposal, to be submitted to the board (e.g., 30 days prior to the meeting).
- When receiving any matters proposed from shareholders, the board should consider such matters by taking into account the interests of the company. If no such interest can be determined, the matters should be dropped, while giving reasons to the proposing shareholders. If the proposed matter appears to be relevant to the shareholders' interests, the matters should be included in the agenda; whether a resolution of such matters will be passed or not is subject to the discretion of the shareholders.

2.4 Date, time and place of meeting

In fixing the date of meeting, the board should take into consideration the convenience of shareholders in attending the meeting, for example, avoiding too early or late hours for the meeting, and selecting a suitable place with good transportation. When most shareholders reside in Bangkok or its vicinity, the meeting place should be in Bangkok (the Public Company Act specifies the place of meeting to be in a province where the head office of the company is located unless stated otherwise in the company's articles of association). A map should also be provided with a notice of meeting for convenience. Furthermore, the company should prepare audio and visual equipment suitable for meetings and presentations.

2.5 Notice of meeting

Principles

Shareholders should be informed of the meeting and agenda well in advance of the event. Shareholders may appoint a proxy to attend the meeting and to vote in accordance with guidelines given by such appointing shareholders. Therefore, the meeting notice should contain sufficient information to enable shareholders to properly decide their voting.

Relevant rules

The Public Company Act: The law requires the notice of meeting to contain adequate information, such as the time and place of the meeting, agenda, and opinions of the board for each matter on an agenda. It further requires at least seven days notice prior to the meeting.

SET and SEC Rules and Regulations: Additional provisions and requirements for details of the notice for certain matters are prescribed. For example, at least 14 days notice is required for the issuing of securities for directors and employees (ESOP), the entering into connected transactions, or delisting.

Practice guidelines

The law broadly specifies that the notice of the meeting shall contain adequate information. To determine whether information provided in the notice is "adequate", assume that you are a shareholder and receive such notice. Are you able to give your vote by proxy? To do so, such notice must contain details of what to consider (for example, in case of an increase of capital, the amount to be raised, how to raise funds, purposes, and costs and benefits to a company and shareholders, together with opinions and reasons given by the board. Your opinions as a member of the board will prove that your actions were carried out with loyalty and due care for the best interests of a company and shareholders. See more details in Part 3: Preparation of the Notice of Shareholder Meetings.

In addition, the notice should be furnished with relevant documents, for example, minutes of the previous meeting, a proxy form, annual report and financial statements (in case of an AGM). It should also state any required documents to be presented by shareholders or their proxies in attending the meeting.

The law further requires the firm to announce the notice of meeting in a newspaper(s) prior to the meeting. Therefore, the more details the notice of the meeting contains, the more expenses will be incurred by the company. However, the spirit of the law is to ensure dissemination of information concerning the date, time and place of the shareholder meeting, and agenda to all shareholders. You may collate all details of relevant information as supplementary documents for a meeting, instead of announcing them in a newspaper(s). Rules for providing appropriate information to shareholders should not impede the dissemination of information to shareholders.

2.6 Proxies

Principles

Under Thai law, voting by mail or through the Internet does not exist, shareholders must attend in person or by proxy. Some shareholders might feel they are wasting their time and expense in attending the meeting. A company should, however, encourage the exercising of voting rights by shareholders, at least by appointing their proxies with voting guidelines as instructed by shareholders.

Relevant rules

Public Company Act. The Notification of the Ministry of Commerce enacted under the Public Company Act sets forth three types of proxy forms for use by shareholders. The proxy can be given in two fundamental patterns as follows:

- Pattern 1: Without voting guidelines. Here, A appoints B as his proxy to attend a meeting, in which B may, at his discretion, vote as he thinks appropriate. This is suitable for the appointment of a trustworthy proxy.

- Pattern 2: With voting instructions. An appointing shareholder will give his proxy voting instructions for each matter in an agenda as to “affirm”, “oppose”, or “abstain” in voting.

SET and SEC Rules and Regulations. These impose additional requirements in certain significant matters (e.g., an increase of capital or entering into connected transactions). A company must facilitate the voting of shareholders by sending a proxy form with voting guidelines (proxy pattern 2) to shareholders, and selecting at least one independent director as a designated proxy for shareholders who cannot either attend the meeting or find their own proxy.

Practice guidelines

Whatever matters are considered at the shareholder meeting, a company should comply with the SEC notifications in the following manner:

- As a viable alternative to in-person attendance by shareholders, an independent Director of the company should be designated for proxy voting purposes. The details of said independent directors (i.e., name, address, and interests) should be given to all shareholders. Such directors should be informed of being selected as the designated proxy for shareholders, so that he/she will be available to attend the meeting as scheduled.

- A company should establish measures to ensure that such independent Director is voting as instructed by shareholders. The proxy form submitted by shareholders should also be used as evidence for counting votes of shareholders.

- Even though the firm may have distributed a proxy form pattern 2, a company should, in any event, accept a proxy form pattern 1 if and when submitted by shareholders.

2.7 Examining documents prior to meeting

Practice guidelines

A company should provide enough personnel to facilitate shareholder meetings. The document inspection process prior to the meeting should in no way impede the attendance of the meeting by shareholders. In addition, documents required to be able to attend the meeting should be set only if and when necessary, and not be onerous to shareholders.

2.8 Votes

Practice guidelines

A company should establish transparent and explainable procedures for vote counting. In the past, voting by the show of hands was often chosen. The advantage of this method is that results are known immediately. However, vote counting may be in error if many shareholders are attending the meeting, or some shareholders may not wish to make their votes known publicly. Furthermore, no evidence is kept for future inspection. A company should, therefore, encourage voting by use of a polling card for each matter in the agenda. This practice also brings more accuracy in counting votes, and the results of voting can then be announced in a timely manner. Persons responsible for counting votes should possess neutral and trustworthy characters. Polling cards submitted by shareholders should be kept and maintained carefully and appropriately for future inspection by shareholders.

2.9 Conducting meetings

Practice guidelines

You as a director and those holding the function of chairman, managing director, and audit committee members should recognize the importance of attending shareholder meetings, and then attend **every** shareholder meeting to listen to comments and suggestions and respond to queries. The following contains guidelines for conducting shareholder meetings.

- Prior to convening the meeting, the meeting chairman should confirm the total number of shareholders in attendance, and the total of their votes, as well as the numbers and votes of those absent. Before agenda items are discussed, the chairman should address the following issues:
    - Shareholders with interests in any matter proposed at the meeting shall not be entitled to vote on such matter. Both direct and indirect interests of such shareholders should be declared, for example,

interests in a business under control or shares held through a custodian, etc.
  - Rules governing voting and announcement of results.
  - Right of shareholders to inquire.
  - Right of shareholders to oppose when voting.
  - Right of shareholders to request a court order to revoke any meeting resolutions passed that are not in compliance with the laws or the articles of association of the company.
- The matters discussed at the meeting should be in the sequence as given in the meeting notice — any additions or order changes of matters discussed should be made only for appropriate reasons. For any material matters proposed by shareholders which are not on an agenda, a chairman should, at his discretion, determine the necessity and urgency of the matters as well as the rights of shareholders who are not present.

- Shareholders should be given an opportunity to make comments and inquires, at which a reasonable amount of time should also be provided. Furthermore, directors should give direct and clear responses to all queries.

2.10 Preparing minutes of shareholder meetings

Relevant rules

The Public Company Act. The law requires a public firm to prepare and complete the minutes of shareholder meetings within 14 days from the meeting date, and keep such minutes at the company. Shareholders may exercise the right to revoke any meetings held or shareholders' resolutions passed wrongly or not in accordance with the laws within 30 days from the meeting date.

Practice guidelines

The minutes should be complete, accurate and clear, specifying important issues asked by shareholders, clarifications given by the board, and the number of votes of shareholders casting affirming, opposing and abstaining votes. In addition, the minutes should specify shareholders not entitled to vote due to their interests in matters discussed at the meeting.

A company should disclose or disseminate the minutes of the meeting upon completion at the company's business office or website, or through electronic means of the SET for further inspection of accuracy and completion, and objection, if any, by shareholders. This can be done immediately; it is not necessary to wait for approval of such minutes at a next shareholder meeting.

In addition to preparing the minutes, the company should provide a video recording for shareholder meetings. This will help any shareholders with queries to follow all events conducted at the meeting. It can also be used as reference, and for preparing the minutes of the meeting afterwards.

Part 3

Preparation of Notices of Shareholder Meetings

3.1 Principles
3.2 Practice guidelines for preparing agendas
    3.2.1 Appointment of directors
    3.2.2 Remuneration for directors
    3.2.3 Appointment of auditors
    3.2.4 Other matters
        (1) Right issues
        (2) Convertible securities
        (3) Securities issued for directors and employees
        (4) Connected transactions
        (5) Acquiring or disposing material assets

Part 3 Preparation of Notices of Shareholder Meetings

One of the basic rights of shareholders is the right to attend and vote at shareholders' meetings. Shareholders should be furnished with sufficient information for decision-making.

3.1 Principles

The Public Company Act requires the board to prepare the notice of shareholders' meeting by specifying the place, date, time, agenda and matters for discussions together with appropriate details. Furthermore, each matter is required to be specified as either "matters for information", "matters for approval", or "matters for consideration", together with opinions of the board of directors on such matters.

To determine if the notice of the shareholder meeting contains adequate information, simply assume you are a shareholder wanting to vote on the proposed matters. Determine the information needed to make a decision. For certain matters annually discussed at shareholder meetings, collate queries frequently asked by shareholders at previous meetings, and then clarify them and put these in the meeting's notice.

To provide details for consideration and the board of directors' opinions, the following principles should apply:

- **Matters for consideration.** This section should provide, at least, (1) overall information, (2) purposes, reasons and necessary actions, and (3) the impact on the company and shareholders**.** The last point should include all types of impact as well as identifying all possible risks to the company and shareholders.

- **Opinions of the board.** Do not simply state, "concurring" when justifying the appropriateness of proposed actions. If some of the directors do not agree with the actions proposed, they should give their opinions and supporting reasons. Clarification will help shareholders determine if the board is performing its duties with due care and loyalty, and in the best interests of the company as required by law.

Providing information about shareholder meetings to shareholders is very important. You should ensure that all shareholders receive such information. The Public Company Act requires an announcement of the meeting in newspapers for at least three days. To reduce costs, however, you may announce only the date, time, place and agenda of the meeting. Details could be prepared as supplementary documents to the notice of the meeting. You may also post notice of meetings through the company's website.

3.2 Practice guidelines for preparing agendas

As mentioned earlier, the board of directors shall set an agenda for the shareholder meetings. The following guidelines should be taken into consideration when drawing up the agenda:

- Matters materially affecting business operations, financial status and/or reputation of the company should be provided to shareholders for decision-making. Any matters to be discussed at shareholder meetings should be pre-considered by the board of directors.
- Sequencing the agenda should be done by relative importance; matters for consideration like appointments, approvals or ratifications (i.e., the more important issues) should be listed prior to matters for information.
- For matters for consideration, those materially affecting the shareholders or company's business operations should be covered first and foremost so that there will be sufficient time for discussion and conclusion.
- Voting on important matters can be done separately or all at once; however, votes should be cast on each matter individually.

The information below is provided as guidance when preparing the agenda of shareholder meetings, based upon sample checks and reviews of meeting notices of several companies.

3.2.1 Appointment of directors

Principles

Directors are entrusted by shareholders to operate and manage the company's business on the shareholders' behalf. In nominating them, shareholders should have sufficient information about them with respect to their qualifications and appropriateness for the job. Voting to appoint directors should be carried out on an individual basis; the shareholders are then able to review the appropriateness of each Director separately. In addition, a disclosure of the voting method, either by cumulative voting or by majority voting, should be announced.

Details of information disclosed in the notice of meeting

- **Appointment of new directors**. The following information is the minimum that should be given:
  - Basic information regarding the nominated directors, such as name, age, work experience, education, number of shares held in the company, legal disputes (if any), etc.
  - Management of and position in any competing business, or relations to the company's business, such as relations to customers, suppliers of raw materials, etc., so that shareholders are aware of any possible conflicts of interest in acting as a company director.
  - Type of directors to be appointed, for example, Audit directors, a Chairman, or legally-binding signatory directors.
  - Selection method, for example, is there a nomination committee? If not, who will select or nominate directors, as well as what is the selection criteria?
- **Re-appointment of directors.** The following information is the minimum that should be given:
  - Same as stated in first three points for the appointment of new directors.
  - Performance while holding a directorship, such as records of attending meetings, contributions to company business developments as well as methods used to determine the directors' accountability to shareholders.

3.2.2 Remuneration for directors

Principles

Fixing remuneration for directors is one of the key mechanisms to attract qualified and experienced persons to serve, and perform in the shareholders' best interests. The Public Company Act allows each company to determine its own remuneration packages, according to the company's articles of association, or by two-thirds vote of shareholders' resolutions, to ensure directors will be responsible and accountable to shareholders. But it should be the shareholders who fix the remuneration packages. This is preferable to the company's articles of association providing a wide range of remuneration packages and the board then fixing its own remuneration each year. Such remuneration should be in line with the director's roles and responsibilities, and should consider the performance of the board on both a collective and individual basis.

Details of information disclosed in the meeting notice

- **Structure of remuneration of directors.** Typically, they consist of fixed meeting allowances, commissions dependent upon the company's performance, additional compensation for committee memberships (e.g., executive directors, audit directors, etc.), rights to ESOP shares, and other benefits. If directors receive different meeting allowances, reasons should be provided.
- **Fixing meeting allowances for directors.** A disclosure of the meeting allowance for each director should be carried out.
- **Commission of directors.** A disclosure of the amount and the criteria for fixing directors' commissions. For example, the total amount of commissions is X% of net profits, or a surplus of Y% of shareholders equities, as well as criteria for allocation of commissions to individual directors.
- **Relevant information for fixing remuneration (if any).** For consideration of directors' remuneration by shareholders, the company may disclose director's remuneration in previous years, and then compare any changes with the company's performance.
- **Opinions of directors.** Explanatory reasons for the appropriateness of the remuneration proposed should be given. This may include comparisons with other companies, company performance in previous years, frequency of attendance of board or committee meetings, and probably include a list of directors attending less than 75% of the held meetings. If a compensation committee has pre-considered the criteria for fixing remunerations, the company should also provide this committee's opinions.

3.2.3 Appointment of auditors

Principles

Shareholders receive returns in the form of dividends payable from profits. The value of investment funds of shareholders depends on the financial status and performance of the company. Therefore, it is necessary for shareholders to have reliable financial statements to monitor director's performance, and to make investment decisions. Having "reliable auditors" responsible for reviewing financial statements ensures shareholders of the accuracy of financial statements prepared by the management. Furthermore, these auditors should have proper knowledge and experience, and be independent from management so as to provide a true and fair view and straightforward opinions of financial statements.

Details of information disclosed in the notice of the meeting

- **Names of auditors and audit firm.** At least two auditors should be selected for consideration and appointment by shareholders as a safeguard in case one of them is unable to sign the reports of a company's financial statements, for example, in case of non-approval by SEC.
- **Remuneration of auditors.** This should be compared to the remuneration of auditors paid in previous years. In case of a significant increase of remuneration, reasons should be given.
- **Relations with the company.** If the proposed auditors have any other relations with the company, such relations and other remuneration received from the company (if any) should certainly be given to enable shareholders to determine the independence of such auditors. For example, if the proposed auditors are also appointed accounting advisers, or inspectors of company's internal control systems, or the company executives have close relations with such auditors or their accounting firms e.g., being ex-employees, or having a family relationship, etc.
- **Same auditors of previous year.** The number of years that auditors are employed by the company should be identified. Hiring the same auditors for long periods of time won't allow re-checking the performance of previous auditors.
- **Changes of auditors.** Reasons should be clearly given, especially in case ex-auditors refuse to take auditing work, or the auditors request significant increases in their remuneration.
- **Auditors of subsidiaries and associated companies.** Whether or not auditors are appointed for subsidiaries and associated companies should be specified. If not, reasons should also be given.

3.2.4 Other matters

(1) Right issues[1]

- **Allocation of rights issues.** The meeting notice should clearly state the allocation of rights issues to existing shareholders, individual investors, or specific groups of persons for consideration and decision-making at the shareholders' meetings. This matter should not be passed by board resolutions, as different allocation methods may cause different dilution effects to shareholders.
- **Allocation of unsubscribed shares to directors or specific persons.** This matter should be separated for consideration. Names of persons, relations

[1] Public companies are required to disclose information relating to an increase of capital according to SET Regulations (Bor Jor/Por 11-03, find more details at http://www.set.or.th/th/about/rules/disclosure/Por.11_03.pdf). These consist of Board resolutions, details of increased capital, allocation methods, required permits from authorities, objectives of using increased capital, and the company and shareholders' benefits from a capital increase.

with the company, and reasons and necessity of such actions should be disclosed in the meeting notice so shareholders who disagree with the proposed allocation are able to protest without affecting other resolutions concerning the firm's capital increase.

- **Objectives of increased capital.** How the increased funds will be used and how it will benefit the company should be clearly stated.
- **Offering price.** A method for fixing prices should be clearly determined. Some common examples are 1) book-building, 2) comparing market prices, 3) a comparison rate with the market closing price on the day just before the first offering date. If an offering is made to a specific person(s) at below market price and the balance between the market price and the offering price exceeds the amount allowed under the law, (i.e., 10%), the board must provide opinions as to the necessity of the favorable offering. Such an offering requires specific approval from the SEC, to which the company must give notice of meeting and provide shareholders' resolutions as required in the SEC Notifications.

(2) Convertible securities

Apart from details given in the meeting notice as required by SEC Notifications concerning issuing of convertible securities, the company should provide details on the following matters at shareholders' meetings. The matter should not be left to the board, because it has material effects on shareholders.

- **Special characters of securities.** When a firm issues convertible securities with special characteristics affecting the company or the shareholders, the company should clearly disclose their characteristics and impact. For example, the rights for shareholders to subscribe to warrants, or the firm to buy warrants from holders (call options), details of the characteristics of such securities, and exercising of such call options by the company should be clearly stated. The company should not provide uncertain conditions in exercising a call option rights, e.g., by stating that the exercising of such rights shall be at the board of directors' discretion.
- **Time for exercising rights.** A maximum limit regarding the exercise of rights in any relevant year should be specified. The frequency of exercising such rights will impact share prices, net profits, and shareholding ratio. Shareholders should, therefore, take part in the consideration of this matter.
- **Allocation of unsubscribed convertible securities.** This matter should be considered at the shareholders' meetings. Allocation of unsubscribed securities may be considered concurrently with the matters concerning the allocation of shares issued for a capital increase to back up convertible securities.

(3) Securities issued for directors and employees

When offering ESOP, a company must disclose information in the meeting notice as required by SEC Notifications. However, the firm should clearly disclose additional information on the following matters:

- **Allocation of securities to particular directors and executives.** Even though such allocation requires the approval of a compensation committee, the board is still required to provide its opinion regarding the appropriateness of such allocation. The board's opinion may differ from the compensation committee's.
- **Benefits to the company from the allocation of securities to particular directors and executives.** Explanations about the past performance and contributions of each director and executive for the company should be provided, comparing individual remuneration received at present, both in cash and in kind, as well as comparing present and past offerings of ESOP. Comparison between ESOP benefits to the company and a drop in share prices in general (a dilution effect) should be further stated.
- **Other relations with the company.** It should clearly state any other relations the allocated directors and employees have with the company, for example, being major shareholders or having any interests in the company.
- **Opinions of directors.** Apart from opinions concerning the necessity of issuing ESOP, the board should provide explanations on an individual basis about the unequal allocation of ESOP to each director, or the allocation of ESOP to any directors, executives or employees exceeding 5% of the total offered securities.

Comparing market price with offering price or call option price. For reference prices, an average of market prices within a reasonable period of time (e.g. 15-30 days) shall be used to determine an appropriate current market price, to dampen the effect of share price volatility due to unusual incidents over a short period.

(4) Connected transactions

Presently, public firms are required to comply with the SET Notifications concerning connected transactions, which set forth a disclosure of particular information in the notice of the meeting. Upon review by the SEC, the company should, however, disclose additional information on the following matters:

- **Connected parties.** The names and relationships, such as shareholding, relations with directors, executives or major shareholders, should be clearly stated. In case of a juristic connected person, details of such juristic person, (such as groups of major shareholders, types of business, etc.,) should be provided.
- **Character of transactions.** Types of transactions should be specifically identified, for example, business transactions entered to support the ordinary course of business of the company, transactions relating to a lease or let of immovable property which doesn't exceed three years, transactions relating to other assets or services (e.g., acquiring or disposing of assets, granting of rights to property, or undertaking or accepting of services), or financial support (e.g., lending of money or other assets, provision of assets as collateral, undertaking of guaranty, or discharging of obligations) etc.

- **Prices and conditions.** Comparison between prices and conditions offered to the connected parties should be clearly and adequately stated so that the shareholders have sufficient information for decision-making. For example, references given to a price list if the buying and selling prices rendered in the ordinary course of business are available as a market price. In other cases, the prices of a third person (on an arm's-length basis) together with opinions from independent experts may be used (for example, the appraisal of immovable property by independent appraisers, etc.). For a contract price, it should further state any significant conditions and provisions thereon.
- **Opinions of financial advisors.** For any complicated matters, such as those listed below, the company should provide the opinions of financial advisors:
  - Whether transactions are entered into with the best interests of the company;
  - Whether conditions of transactions are fair; and
  - How shareholders should vote
- **Opinions of the board of directors.** The board should provide opinions on any connected transactions requiring approval at shareholders' meetings. At the board meeting considering these transactions, any person having interests in such deals should not attend. The opinions of the board should include the following matters:
  - How transactions entered into suit the best interests of the company and how they will be executed as well as the risks to the company, for example, the lending, or undertaking of guaranty on loans to company subsidiaries.
  - Whether criteria for determining prices and conditions are fairly set for the company, and whether the same criteria apply for transactions entered into with a third person (on an arm's-length basis).
  - Whether protection measures to ensure a sample check of actual transactions being entered into are in accordance with established contracts or policies
  - Reference to deviating opinions from outside the board of directors (if any).

(5) Acquiring or disposing of material assets

For acquiring or disposing material assets, listed firms are, at a minimum, required to disclose information according to the SET Notifications. The company should, however, disclose additional information to shareholders. This could be done by adopting guidelines for information disclosure on connected transactions regarding the characteristics of transactions, prices and conditions, as well as opinions of both financial advisors and the board of directors as previously mentioned.

Appendix

Shareholders Meetings Case Studies

Response to queries from shareholders

Case

During a shareholders' meeting the annual report of the performance of the company was considered. One individual shareholder raised an issue related to the company's performance by questioning a non-disclosure in the company's annual report on the details of selling and buying goods with connected companies. The chairman at the meeting did not clarify or respond. Instead he requested voting from the meeting, and a resolution was passed by majority votes of majority shareholders.

Issues to consider

The shareholder meeting is a forum in which directors should present their performance record in the past year to shareholders. So, for management transparency, the directors should disclose full information, either in the notice of the meeting or by giving shareholders opportunities to inquire at the shareholders' meeting.

Inspection of documents prior to shareholder meetings

Case

At one company's extraordinary shareholder meeting, there was a matter proposed for approval concerning financial support to connected companies. On the meeting date, the company set out rather complicated procedures for inspecting the identification documents for attendees, and did not provide enough personnel to facilitate such inspection. This led to many shareholders waiting outside the meeting room while the chairman started the meeting as scheduled. The chairman requested the meeting to consider and approve a matter, the shareholders in the meeting room passed their resolutions within 10 minutes, then the chairman adjourned the meeting. The shareholders still waiting outside never got a chance to participate in the meeting.

Issues to consider

Directors should ensure a process for document inspection prior to the meeting that is concise, expedient, and not onerous to shareholders. The meeting notice should ask shareholders to arrive early and inspect the documents before attending the meeting. To maintain transparency and reduce any protests, the directors should be more flexible in starting the meeting so that shareholders are fully given an opportunity in exercising their rights to vote. The directors should not expedite the meeting and adjourn within a short period of time only because a given matter was proposed by major shareholders; the importance of minority shareholders should not be overlooked.

Information in the meeting notice

Case

A group of individual shareholders of one public firm joined forces and requested their board to hold an extraordinary shareholder meeting to consider a matter relating to the removal of certain directors. The board of directors agreed, but, the notice of meeting did not contain the matter of directors' removal on the agenda. Furthermore, the managing director sent a letter to all shareholders requesting them to grant him their proxy, stating that he was able to solve the company's problems. Some shareholders, unaware that the meeting was to consider removal of some directors, authorized the managing director as their proxy.

Issues to consider

The meeting notice is an important document that shareholders will use to decide whether to attend the meeting or to authorize a proxy to attend on their behalf. Hence, the notice should contain complete and sufficient information. Proxy should be undertaken in the name of and for the company. The company should propose persons having no interest therein and able to oversee the shareholders' interests to be authorized as a proxy, for example, independent directors.

Determining the place of the meeting

Case

One company normally held its shareholder meetings at the head office of the company in Bangkok. After a proposed resolution concerning purchase of land from connected companies was not passed by shareholders' meetings twice, the company changed the meeting place to the company's office in a rural location by reasoning that shareholders needed to see the conditions of the land being purchased.

Issues to consider

In determining a place to meet, the convenience of shareholders should be taken into consideration to enable most of the shareholders to attend the meeting conveniently. For example, if most shareholders reside in or around Bangkok, the meeting should be held in Bangkok. The company should not, in any way, propose a meeting place that will impede shareholders' attendance.