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

Contents

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

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

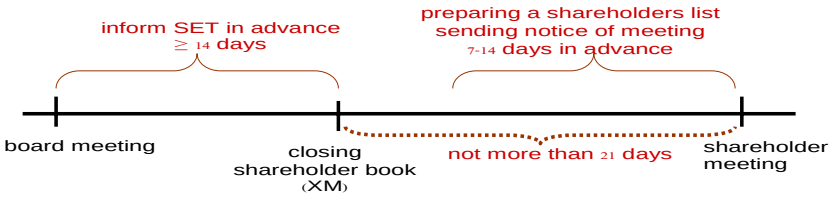
Relevant rules and practice guidelines

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

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.