

Directors' Handbook

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ข้อมูลบรรณานุกรม

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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 <ul style="list-style-type: none"> • principles and practice guidelines for a board. |
| Volume 2 | Practice guidelines for directors <ul style="list-style-type: none"> • suggestions, guidelines and issues affecting directors' decisions and duties. |
| Volume 3 | Rights and equitable treatment of shareholders and shareholder meetings <ul style="list-style-type: none"> • 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

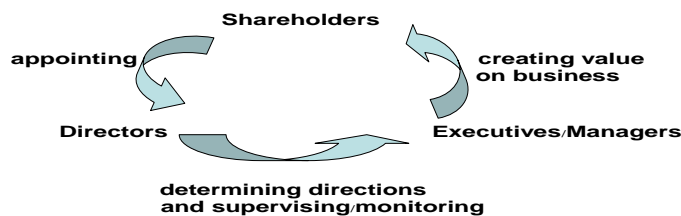
1. General information about directors

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

1. Fundamental roles and responsibilities
 - 1.1 Leadership
 - 1.2 Responsibilities towards management
2. Characteristics
 - 2.1 Composition
 - 2.2 Selection and appointment
 - 2.3 Structure
3. Conduct of the board

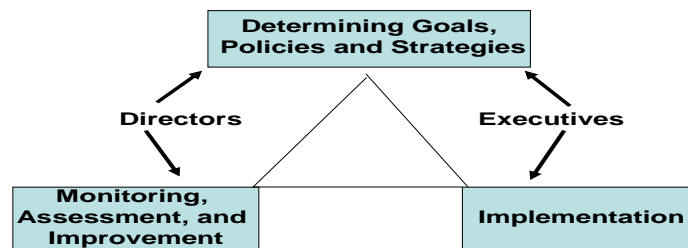
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Part 2 Roles and Responsibilities of Board of Directors

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 ($5 \times 10 = 50$ 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 effects 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/index.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)