

# CORPORATE GOVERNANCE UNDER THE PROPOSED AMENDMENTS TO THE SECURITIES AND EXCHANGE ACT OF 1992



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"Corporate governance", as defined by the Stock Exchange of Thailand ("SET"), is a system of processes by which a company is directed or controlled with the objective of protecting the rights and interests of its shareholders and other stakeholders. It includes the relationships between a company's board of directors, executive and management teams, and shareholders.

There is no law in Thailand, even the Securities and Exchange Act 1992 ("the SEC Act"), that specifically mandates the implementation of corporate governance in companies.

For listed companies, the SET only provides guidelines for cooperation ("Code of Best Practices for Directors of Listed Companies") for voluntary compliance by those companies without government enforcement.

In order to improve the operating standards of listed companies in Thailand and enhance their reliability and fairness to investors so that they are more in line with international practice, the government authorities, along with the SET and Ministry of Finance, have proposed amendments to the SEC Act. One of these amendments introduces the

concept of corporate governance in a new chapter (Chapter 3/1) consisting of thirty sections (Sections 89/1 to 89/30), and seven sections with penalty clauses for non-compliance (Sections 289/1 to 289/7).

## **Duties and Responsibilities of Directors and Executives**

Directors and executives are charged with the following responsibilities.

1. To operate the company with responsibility, care, good faith, and

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in compliance with the law, company objectives, articles of association, and resolutions of the board of directors and shareholders.

**Responsibility and care:** Make any decision for the best interests of the company and not their own, based on reasonably adequate information.

**Good faith:** Perform any act for the best interests of the company, with an appropriate and lawful purpose and not in conflict with company interests.

**Non-compliance:** a minimum fine of THB 500,000 up to the actual amount of damage caused by the directors and executives; in the case of a dishonest act, a minimum fine of THB 1,000,000 up to double the actual amount of damage.

2. Not to enter into any transaction with the company or its affiliates, or any material transaction involving personal interests or conflict of interests, either directly or indirectly, without the approval of a shareholders' meeting.

3. To report to the company any interests of their own or related persons in operating the company or its affiliates.

**Non-compliance:** a maximum fine of THB 100,000, and THB 3,000 per day of non-compliance.

4. To appoint a company secretary responsible for preparing and keeping corporate documents. **Non-compliance:** a maximum fine of THB 100,000, and THB 3,000 per day of non-compliance.

5. To arrange a system for storing documents of material

information for at least 5 years after their execution.

**Non-compliance:** a maximum fine of THB 500,000, and THB 10,000 per day of non-compliance.

6. To disclose material information to the shareholders and the public, including information provided in obtaining resolutions at shareholders' meetings; financial reports, reports on company operations, or other reports required to be disclosed by law; opinions of the company on tender offers; and other information or reports released by the company to its shareholders or the public.

**Non-compliance:** a maximum imprisonment of 2 years, or a fine of THB 500,000, or both.

### **Rights of Shareholders and Investors**

The draft amendment specifies the rights of shareholders and investors as follows:

1. Shareholders (individually or collectively) holding more than 5% of the total voting right may order a director or executive to return any gains to the company, or claim indemnification from a director or executive who has not acted with responsibility, care, and in good faith, or acted for his/her own interests or those of other persons.

2. Shareholders (individually or collectively) holding more than 5% of the total voting right may propose any matter as part of a shareholders' meeting agenda.

3. Shareholders (individually or collectively) holding more than 5% of the total voting right may submit a complaint to court to annul resolutions which are not in compliance with the provisions of this

new chapter.

4. Shareholders may approve matters specified in the Act, including any related transaction between a director or executive and the company or company affiliates, except those specifically described in the SEC as not requiring shareholders' approval.

5. Investors may claim against directors or executives for false disclosure or concealment of material information which is disclosed or should be disclosed to the shareholders and the public.

Moreover, the SEC Act prohibits directors and executives from using a resolution of the board of directors or shareholders' meeting as justification for any liability in case of recklessness or dishonesty in the following matters:

1. Disclosure or non-disclosure of material information to the board of directors or a shareholders' meeting.

2. Taking the company's assets or interests.

3. Seeking advantage from the company's assets.

The principles of the draft amendments have been approved by the Cabinet and are now with the Council of State for review and revision for further submission to the Cabinet. Once approved by the Cabinet and passed by the National Legislative Assembly, the amended Act will be published in the Government Gazette and take effect 30 days after publication. At the time of this writing, indications are that the amended law could take effect by the end of this year. ♦