The Corporate Governance Review

Second Edition

Editor

Willem J L Calkoen

Law Business Research

The Corporate Governance Review

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EDITOR'S PREFACE

Willem J L Calkoen

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this second edition, we can see that corporate governance is becoming a hotter topic with each passing year. What should outside directors know? What systems should they set up for better enterprise risk management? How can chairs create a balance against imperial CEOs? Can lead or senior directors create sufficient balance? Should most outside directors know the business? How much time should they spend on the function?

Governments, the European Commission and the Securities and Exchange Commission are all pressing for more formal inflexible acts, especially in the area of remuneration, as opposed to codes of best practice.

More international investors, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, wise boards have 'selected engagements' with stewardship shareholders in order to create trust.

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at GM and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code and many countries produced national codes along the model of the Cadbury 'comply or explain' method. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been many instances where imperial CEOs gradually amassed too much power and companies have fallen into bad results – and sometimes even failure. More have failed in the financial crisis than in other times, hence the increased outside interest in government acts, further supervision and new corporate governance codes for boards, and stewardship codes for shareholders and shareholder activists.

This all implies that executive and non-executive directors should work harder and more as a team on strategy and entrepreneurship. It is still a fact that more money is lost due to lax directorship than to mistakes. On the other hand, corporate risk management is an essential part of directors' responsibility, and especially the tone from the top.

Each country has its own measures; however, the various chapters of this book show a convergence. The concept underlying this book is to achieve a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that will permit convenient comparisons where a quick 'first look' at key issues would be helpful to general counsel and their clients.

My aim as General Editor has been to achieve a high quality of content so that *The Corporate Governance Review* will be seen, in time, as an essential reference work in our field.

To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who helped with this project. I hope that this book will give the reader food for thought; you always learn about your own law by reading about the laws of others.

Further editions of this work will obviously benefit from the thoughts and suggestions of our readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
April 2012

Chapter 27

THAILAND

Santhapat Periera and Charunun Sathitsuksomboon[1]

I OVERVIEW OF GOVERNANCE REGIME

Company laws in Thailand include the Public Limited Companies Act B.E. 2535 (1992), as amended up to No. 3 B.E. 2551 (2008) ('the PLC Act'); the Securities and Exchange Act B.E. 2535 (1992), as amended up to No. 4 B.E. 2551 (2008) ('the SEA'); and respective regulations in the Thai Civil and Commercial Code for limited liability companies. Aside from these statutes, the Stock Exchange of Thailand ('the SET') also published the Principles of Good Corporate Governance for Listed Companies in 2006 ('the Principles of GCG 2006'), which are voluntary guidelines. Listed companies may adapt these principles to their circumstances, but should they choose not to comply with any of them, they are required to fully explain their reasons for not doing so or to present their alternative course of action.

Prior to the Principles of GCG 2006, the starting point on corporate governance in Thailand was a revised regulation requiring at least two independent directors on the board of every listed company in 1993, before the 1997 Asian financial crisis. In 1995, the SET studied the roles of audit committees, as it was well aware of the importance of good corporate governance in listed companies. The SET published the 'Best Practice Guidelines for Audit Committees' in 1999, in which necessary guidelines were provided, including the qualifications and scope of work of the audit committee. By 31 December 1999, all listed companies were required to set up an audit committee composed of no less than three independent directors. The Code of Best Practices for Directors of Listed Companies was also issued by the SET in the same year. Although this Code is not a legal requirement, the SET encourages listed companies to consider following the guidelines for all board members in regard to their behaviour while holding directorship.

1 Santhapat Periera is a partner and Charunun Sathitsuksomboon is an attorney-at-law at Tilleke & Gibbins.

The Code set the standard for directors and clarified the duties and responsibilities of listed company directors.

The Committee on Corporate Governance Development appointed by the SET, which consisted of representatives from a variety of professional organisations in both the public and private sectors, released the Report on Corporate Governance ('the Report') in August 2001, which was another corporate governance reform for Thailand. The Report established principles, recommendations and best practice guidelines for directors, boards, management, shareholders, risk management and reporting, and business ethics. For the purpose of the Report, the Committee defined the concept of corporate governance as:

> *A set of structure and process of relationships between a company's management, its board and its shareholders to enhance its competitiveness towards business prosperity and long-term shareholder value by taking into consideration the interests of other stakeholders.*

The Thai government designated 2002 as 'The Year of Good Corporate Governance' and launched a number of important reforms. The National Corporate Governance Committee ('the NCGC') was established and chaired by the Prime Minister. In the same year, the SET implemented its 15 Principles of Good Corporate Governance for Listed Companies ('the 15 Principles of GCG'), which is similar in scope to the United States' Sarbanes–Oxley Act. These Principles cover several important corporate governance issues, including:

a equitable treatment of shareholders;
b structure, responsibilities and independence of the board of directors;
c board committees and each director's attendance at board meetings;
d disclosure of compensation of directors and top executives;
e financial disclosure and transparency;
f internal control;
g rights of other stakeholders;
h risk management policies;
i connected transactions;
j investor relations; and
k a code of ethics.

The SET has required listed companies to disclose in their annual reports the implementation of the 15 Principles of GCG. Any listed company that does not comply with the Principles must disclose the reason(s) for noncompliance.

The SET later adjusted the 15 Principles of GCG to bring them in line with the OECD principles, which became the Principles of GCG 2006 as currently in force. These modifications brought Thai corporate governance principles up to international standards, creating greater investor confidence in the Thai capital market.

Another milestone in terms of mandatory obligations occurred in 2008. In order to increase operation standards of listed companies in Thailand to be more international, reliable and fair to investors, the government, along with the SET and the Ministry of Finance, proposed the fourth amendment to the SEA. This amendment added the concept of corporate governance of public traded companies to the SEA. The part on corporate governance regarding directors and executives, duties and responsibilities of

directors' and shareholders' meetings was added as a new chapter to the SEA: Chapter 3/1, which is detailed in a total of 32 sections, Sections 89/1-89/32, and another 10 sections, Sections 281/1-281/10, on noncompliance and penalty clauses.

In terms of key players, aside from the two Thai regulators (the SET and the Securities and Exchange Commission ('the SEC')) that are responsible for overseeing the SEA and that play crucial roles in improving corporate governance of listed companies, the other key player in Thailand's corporate governance is the NCGC, which consists of representatives from the Ministry of Finance, the Ministry of Commerce, the Bank of Thailand and regulatory bodies such as the SEC and the SET. Industry representatives also include representatives from the Thai Chamber of Commerce, the Federation of Thai Industries, the Thai Bankers' Association, the Institute of Certified Accountants and Auditors of Thailand, the Listed Companies Association, the Association of Securities Companies, the Association of Investment Management Companies, the Thai Investors Association and the Thai Institute of Directors. Their main responsibilities are to:

a establish the policies, measures and schemes to upgrade the level of corporate governance among institutions, associations, corporations and government agencies in the capital market;

b order the related agencies and persons, both in the private and government sectors, to testify any information to the NCGC;

c suggest related agencies to improve their policy schemes and operating processes, including legal reforms, ministerial regulations, rules and enactments to achieve good corporate governance; and

d promote the guidelines of good corporate governance to the public and related parties to raise confidence among international investors.

The NCGC also has several subcommittees tasked with specific responsibilities in the areas of law, accounting, banks and financial services companies, and public companies.

The Thai Institute of Directors ('the IOD') was founded in 1999, and has played a major role in improving director professionalism and corporate governance in Thailand. The IOD is a not-for-profit, membership organisation established with support from Thailand capital market core institutions, namely the SEC, the SET, the Bank of Thailand and the Foundation for Capital Market Development Fund, as well as international organisations such as the World Bank. Through its various activities, the IOD has helped develop professional standards of directorship and provided best practice guidelines for company directors to perform their duties effectively and to international standards. The IOD offers a variety of education programmes, seminars and forums such as training classes for directors and chairs, company secretaries and audit committees. The IOD also sponsors the Board of the Year Award to listed companies' directors who voluntarily participate in the IOD's evaluation of their board of directors' policies, composition, practices, relations, meetings and leadership.

In 2002, the SET established the Corporate Governance Center, which offers advisory services on how to improve corporate governance to listed firms and private companies with the potential to be listed on the stock market. The Corporate Governance Center has produced and disseminated a variety of information and materials as guidelines including 'Good Governance Assessment,' 'Guidelines for Risk Management,' 'Examples

of Fifteen Principles of Good Corporate Governance Reports' and 'Best Practices for Shareholders'.

Although there are various forms of business organisation under Thai law – such as sole proprietorship, partnership (unregistered ordinary partnership, registered ordinary partnership and limited partnership), branch office, representative office, regional office, limited company (private company limited and public company limited) or joint venture – only a public limited company can be listed in the SET. This is because a public limited company is a company established for the purpose of offering the sale of shares to the public. Accordingly, listed companies as mentioned in this chapter are public limited companies that are listed on the SET. The scope of this chapter does not extend to the rules and procedures that are generally applicable to corporate governance of non-listed companies.

II CORPORATE LEADERSHIP

i Board structure and practices

Typically, Thai listed companies adopt a single-tier board of directors. Pursuant to the PLC Act, the board of directors of a public limited company must consist of at least five directors, the majority of whom must be domiciled in Thailand.

The board of directors has the power and duty to manage the company in compliance with the objectives and articles of association of the company and the resolutions of shareholders' meetings. Therefore, the scope of powers vested in the board of directors may vary depending on those specified in the articles of association and resolutions of the shareholders. Certain material matters are to be approved by shareholders' meetings as required by law, such as the increase or decrease of capital, declaration of dividends and merger. The board has no power to approve such matters, but still has the duty to attend and provide its opinion at shareholders' meetings.

Further, the board of directors may assign one or several directors or any other person to perform any acts on its behalf, unless it is expressly stipulated otherwise in the company's articles of association. All the business of the company undertaken on behalf of the company by the board of directors or the directors or persons assigned by the board shall be valid and binding on the company, notwithstanding any defect that may later be discovered in the election, appointment or qualifications of the directors.

The 15 Principles of GCG recommend that one-third of the board of directors is comprised of independent directors, and the total number of independent directors must not be less than three. The chair and managing director should not be the same person, so that no one person has absolute power. The chair should be an independent director, and should not be the chair or a member of a subcommittee. The PLC Act describes the responsibilities and duties of the chair, such as acting as chair at board meetings and having a casting vote, calling board meetings and acting as chair at shareholders' meetings.

The PLC Act requires the board to convene an annual shareholders' meeting. To enable shareholders to have sufficient information to monitor the company's performance, the board of directors has the duty to disclose sufficient and accurate information in financial statements and reports prepared for shareholders prior to the meeting. All

shareholders should be permitted to make an enquiry or express an opinion at the meeting. The Principles of GCG 2006 recommend that information related to meeting agendas be published on a website and shareholders be permitted to send questions prior to the meeting.

Certain subcommittees should be set up to assist the board of directors to perform special tasks. An audit committee consisting of at least three independent directors must be set up to undertake tasks demonstrating the company's accountability and transparency. The Principles of GCG 2006 recommend that a remuneration committee and nomination committee should also be set up. The remuneration committee's duties are to consider and recommend to the board the criteria for and form of directors' and top executives' remuneration. The board then approves or amends executives' remuneration and proposes directors' remuneration to shareholders for approval. The Corporate Governance Center of the SET issued the Remuneration Committee Guidelines on April 2008 and the Nomination Committee Guidelines on October 2008. The nomination committee's duties are to recruit and examine candidates for directors and key executives who are qualified and recommend the same to the board. The board then proposes qualified directors to shareholders for appointment. To ensure the independence of the remuneration committee and nomination committee, the majority of the members of these committees should be independent directors. Moreover, the chair should also be an independent director, and the chair of the board should not be the committee chair or a member.

Takeovers can bring about significant differences in the company's controlling direction and risks. The PLC Act prescribes a rule relating to mergers and acquisitions requiring that transactions involving purchasing or selling the whole or a major part of the business must be approved by shareholders' resolutions of at least three-fourths of votes cast. Further, the SEA also contains rules relative to the acquiring of securities for takeovers and the making of a tender offer, among other things.

ii Directors

In conducting the business of a listed company, a director or executive shall perform his or her duty with responsibility, due care and loyalty, and shall comply with all laws, the objectives and the articles of association of the company, the resolutions of the board of directors, and the resolutions of shareholders' meetings. 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; and decisions are free of conflicts of interest.

There are no restrictions on a shareholder becoming a director. The PLC Act and articles of association regulate the appointment of directors. Generally speaking, directors are appointed and removed by the resolutions of shareholders. The PLC Act provides two voting methods for appointing directors – majority voting and cumulative voting. The SEA specifies that a director shall have qualifications and shall not have prohibited characteristics as specified by law under the PLC Act (e.g., shall be at least 20 years of age; shall not be bankrupt, incompetent or quasi-incompetent; shall have clean legal records; shall never been dismissed from government service in punishment

for dishonesty), and shall not have characteristics indicating a lack of appropriateness in respect of their trustworthiness in managing business.

Under the PLC Act, a director of a public limited company must not undertake commercial transactions of the same nature as and competing with that of the company; nor may he or she be a partner in an ordinary partnership, or a partner with unlimited liability in a limited partnership, or a director of a private limited company or another public limited company carrying on business of the same nature as and competing with that of the company, either on his or her own account or that of a third person, unless he or she has informed a general meeting of the shareholders in advance. The SET regulations concerning connected transactions impose additional requirements with respect to the disclosure of information and the range of approval required. The term 'connected transaction' covers more than transactions entered into between directors and the company under the PLC Act. The Principles of GCG 2006 recommend that directors' terms of service should be clearly stated in the company's corporate governance policy. Further, the board of directors should review the effectiveness of directors who hold board memberships in other companies or limit the number of board positions that a director can hold.

III DISCLOSURE

Pursuant to the Principles of GCG 2006, the board of directors of a listed company should ensure that all important information (both financial and non-financial) relevant to the company is disclosed correctly, accurately, on a timely basis and transparently through easy-to-access channels that are fair and trustworthy. This important company information includes financial reports and non-financial information specified in the regulations of the SEC and the SET, as well as any other relevant information such as a summary of the tasks of the board of directors and its subcommittees during the year, the corporate governance policy, environmental and social policies and the report on the company's compliance with its environmental and social policies, and the remuneration policy to directors and executives in its annual report.

Under the SEA, financial reports, annual information disclosure form (Form 56-1), annual report (Form 56-2) and news on significant changes are required to be disclosed to shareholders and investors. Financial reports must be reviewed and audited by the auditors who were approved by the SEC as the SEC-approved auditors. Listed companies have a duty to provide accurate financial reports and to cooperate with the auditors in performing their duties. Form 56-1 contains necessary information that investors should know about the listed company, such as the type of business transaction, shareholding structure, explanation and analysis of corporate financial status, future plans and risk factors. Form 56-1 is used for general investors and can be accessed through the SEC's website. Form 56-2 provides similar information to Form 56-1, but for a different purpose. The board has the duty to execute and deliver an annual report to the shareholders before the annual shareholders' meeting. News on significant changes that may impact the company's securities price, such as cessation of business operations and sale and purchase of important assets, must be promptly disclosed by the company.

Further, under the new chapter on corporate governance of the SEA, the directors and executives shall be jointly liable for any damages arising from the disclosure of information to shareholders and the public that contains a false statement or conceals material facts. This includes information provided in obtaining resolutions from 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 shareholders or the public. A maximum of two years' imprisonment or a fine of 500,000 baht, or both, will be imposed on any violator.

There are five recommended best practices in the Principles of GCG 2006. First, in addition to disclosing information as specified in relevant regulations through the channel of the SET, annual statements (Form 56-1) and annual reports, the board of directors should disclose information, both in Thai and English, via other channels (such as the company's website), and all disclosed information should be up to date. Second, a summary of the corporate governance policy approved by the board, together with the implementation of the policy through various channels such as the company's annual reports and website, should be reported. Third, a statement of directors' responsibilities should be presented along with the auditor's report in the listed company's annual report. Fourth, the board of directors should ensure that its roles and responsibilities, together with those of its subcommittees, are disclosed, and this should include reporting to shareholders on the number of meetings and attendance of each director as well as the results of tasks performed during the year. Fifth, the directors' and executives' remuneration policies should be disclosed. The remuneration should correspond to the contributions and responsibilities of each director or executive. In addition, the board should disclose the form and the amount of payment. If any director of the company is also a director of its subsidiaries, the amount representing the director's fee paid by the subsidiaries should be disclosed as well.

IV CORPORATE RESPONSIBILITY

Concerning risk management, the Bank of Thailand ('the BOT'), which is in charge of overseeing and regulating Thai financial institutions, issued rules in 2002 to promote corporate governance among commercial banks and finance companies. The BOT rules require the board of a bank to have an audit committee as well as a risk management committee. Other than the risk management committee, pursuant to the Principles of GCG 2006, under the roles and responsibilities of the board of directors, a risk management policy should be established to cover all activities of a listed company. The board should assign its management to implement risk management policies and request a report from management regularly. The board should review the risk management system or assess the effectiveness of risk management at least annually and whenever there is a change in risk level. The board should also focus on early warning signs and unusual transactions.

Aside from the risk management policy, the board of directors should also ensure that an internal control system is in place, including financial, compliance and policy controls, and review the system at least annually. An appropriate and independent

person or department should be set up to oversee the control system. A written code of business conduct should be prepared and put in place so that all directors, executives and employees understand ethical business standards. Compliance with the code should be closely monitored by the board.

Stakeholders in corporate governance include, among others, customers, employees, suppliers, shareholders, investors, creditors, the community, society, the government, competitors and external auditors, all of which are important parties in contributing to the success of the company. Fair treatment of stakeholders is one of the keys to the company's success. According to the Principles of GCG 2006, stakeholders of a company should be treated fairly in accordance with their legal rights as specified in relevant laws. The board of directors should provide a mechanism to promote cooperation between the company and its stakeholders in order to create wealth, financial stability and sustainability.

A clear policy on fair treatment for each and every stakeholder should be set. The rights of stakeholders that are established by law or through mutual agreements are to be respected. Any actions that can be considered in violation of stakeholders' legal rights should be prohibited, and any violation should be effectively redressed. The board of directors should provide a mechanism so that stakeholders can participate in improving the company performance to ensure the firm's sustainability. In order for stakeholders to participate effectively, all relevant information should be disclosed to them.

Further, it is important for stakeholders to have an effective means of communicating to the board any concerns about illegal or unethical practices, incorrect financial reporting, insufficient internal control, etc. The rights of any person who communicates such concerns should be protected.

Finally, the board of directors should set clear policies on environmental and social issues.

V SHAREHOLDERS

i Shareholder rights and powers

The basis for shareholders' rights and powers is specified in the PLC Act. The PLC Act covers most aspects, including, among others, rights of shareholders, shareholders' meeting, procedures to summon shareholders' meeting upon request by shareholders, notice of meeting, voting and proxy.

The PLC Act requires a company's board to hold an annual general shareholders' meeting ('AGM') within four months after the end of the company's fiscal year. The company's board may convene an extraordinary general shareholders' meeting ('EGM') any time the board considers it expedient to do so. In addition, shareholders holding at least 20 per cent of the issued shares, or 25 persons holding at least 10 per cent of the issued shares, may request in writing for the board to call for an EGM by specifying the matters to be considered. The law requires the notice of shareholders' meeting to contain adequate information, such as the time and place of the meeting, the agenda and opinions of the board on each matter. Notice shall be delivered to the shareholders and the registrar at least seven days prior to the date of meeting. This notice must also be published in a newspaper.

All shareholders have the right to attend and vote at the meeting. Shareholders who hold ordinary shares have one vote per share. Shareholders also have a right to appoint a proxy, although voting by mail is not yet permitted.

Under Section 77 of the PLC Act, the board of directors has the power and duty to manage the company in compliance with the objectives and articles of association of the company and the resolutions of the shareholders' meetings. The resolutions of shareholders are required for certain material matters to the company, such as:

a the sale or transfer of the whole or important parts of the business of the company to other persons;

b the purchase or acceptance of transfer of the business of other companies, or the making, amending or terminating of contracts with respect to the granting of a lease of the whole or important parts of the business of the company;

c the assignment of the management of business of the company to any other persons; or

d the amalgamation of the business.

Unless a higher vote is required under the company's articles of association, voting of not less than three-fourths of the total number of votes of shareholders who attend the meeting and have the right to vote is required for passing resolutions approving these transactions. In an ordinary event, such as approval of financial statements, appointment of directors and auditors and dividend payment, a simple majority vote of the shareholders who attend the meeting and have the right to vote is required for passing resolutions approving these ordinary transactions.

The SET and SEC Rules and Regulations contain additional requirements on matters requiring shareholders' approval. These include, for example, connected transactions, sales and purchase of material assets, and corporate takeovers by partial tender offers.

ii Shareholders' duties and responsibilities

The Corporate Governance Center of the SET published the 'Best Practices for Shareholders' in March 2003, with the aim to help shareholders to better understand their roles and responsibilities and protect their own rights. In March 2006, the 'Best Practices Guidelines on Ensuring that Minority Shareholders Have the Right to Propose AGM Agenda Items in Advance' were also published by the Corporate Governance Center. Pursuant to the 'Best Practices for Shareholders,' nine general best practices are provided:

a attend every shareholders' meeting, unless exceptional reasons arise. Shareholders who cannot attend should appoint proxies to vote on their behalf;

b adequately study information before attending the meeting;

c prepare necessary documents as evidence for shareholder identification;

d register before the meeting begins;

e ask reasonable questions to the board;

f make up their own mind on how to vote;

g monitor general news, the economic situation, and the company's news and information;

h request redress in cases of rights violation; and

i unite to protect shareholders' rights.

Additional best practices for minority shareholders, institutional shareholders and controlling shareholders are also provided. Controlling shareholders should perform their duties honestly and should not use their power for their own benefit, either directly or indirectly. They should avoid any conflict of interest, but if such conflicts arise, their decision-making should be for the benefit of all shareholders and of the company.

iii Shareholder activism

The latest amendments to the SEA have enhanced protection of shareholders' rights significantly through:

a shareholders' ability to propose agenda items for the shareholders' meetings;

b channels for shareholders to seek legal redress, whereby they are entitled to file, on behalf of the company, a claim to disgorge undue benefits obtained by company directors or executives in bad faith;

c shareholders' ability to sue for damages from disclosure of falsified information; and

d the possibility of receiving reasonable litigation expenses from the company as ordered by the court, since they act for the benefit of the company as a whole.

The derivative action, enabling shareholders and investors to pursue lawsuits against the directors for breaches of duties more conveniently and with less concern about costs, was first introduced through said amendment of the SEA in 2008.

iv Contact with shareholders

Pursuant to the guidelines provided under the Principles of GCG 2006, a company's dealing with shareholders goes beyond what is required by law covering the shareholders' rights, including, among others, disclosing up-to-date information via the corporate website, sending the company newsletter and arranging company visits for shareholders. The company should offer minority shareholders the opportunity to propose issues to be included in the meeting agenda in advance of the meeting date. The company should provide an opportunity for shareholders to study the notice of shareholders' meeting via its corporate website at least 30 days before the meeting date. The company should send the notice of the shareholders' meeting and all supporting information to shareholders earlier than required by regulations. The board should encourage shareholders to use proxy forms on which they are able to specify their votes, and should nominate at least one independent director to act as shareholders' proxy. Adequate information should be provided on each agenda item to enable shareholders to make decisions. Shareholders should be given an opportunity to submit questions regarding agenda items before the meeting date via the corporate website or by sending such questions to the board. The minutes of shareholders' meetings should be distributed within 14 days after the meeting date.

VI OUTLOOK

Various awards and rankings have been utilised in order to stimulate good corporate governance in Thailand. These include:

a the Disclosure Awards, which are granted to listed companies that have an excellent information disclosure system;

b the CG Rating Project, to provide corporate governance rankings for investor's decision-making;

c the Board of the Year Awards;

d the SET Awards; and

e the CG Report of Thai Listed Companies.

Based on the CG Watch conducted by the Asian Corporate Governance Association among 11 countries in Asia for 2010, Thailand was ranked fourth in overall factors, behind Singapore, Hong Kong and Japan. In terms of CG rules and practices, Thailand was ranked third, while for enforcement Thailand placed fifth. The SEC is well aware of the enforcement problem, and has attempted to set up a special account team to oversee and inspect information as well as to amend the laws to expand their authority to cover the aspect of directors' and executives' liabilities. To cope with global economic trends, the main guideline, the Principles of GCG 2006, may need to be amended, as these were issued more than five years ago.

Appendix 1

ABOUT THE AUTHORS

SANTHAPAT PERIERA

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In his multifaceted practice, Santhapat Periera helps clients (whether private, quasi-governmental or governmental financial institutions, international or domestic businesses, or individual investors) capitalise on business opportunities in Asia. Described by *Legal 500* as an 'expert on banking, finance, and foreign investment projects', he specialises in structuring loan and financial transactions, establishing banks and other financial institutions, negotiating financing for trade and development projects, debt restructuring and business reorganisation, and advising on the regulatory aspects of banking, financing and investment.

Santhapat's practice is grounded in Asia but inspired by his international education and professional experience. He received a global legal education from Thammasat University, the University of Miami, Boston University and Harvard Law School. He represents Tilleke & Gibbins in the worldwide legal organisations of Lex Mundi, the International Bar Association and the Chartered Institute of Arbitrators.

Santhapat advocates for increased investment in Thailand as the firm's representative to various chambers of commerce, including the Thai Chamber of Commerce and Board of Trade of Thailand, and is a current member of the Board of the Danish–Thai Chamber of Commerce. He has also served on several subcommittees of the Thai Parliament.

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Charunun Sathitsuksomboon is a corporate attorney in the Bangkok office of Tilleke & Gibbins. A pragmatic counsellor, strong negotiator and meticulous practitioner, Charunun handles a wide range of commercial transactions and related tasks, including mergers and acquisitions, joint ventures, due diligence, foreign direct investment, cross-border transactions, corporate restructuring and e-commerce. She also advises on the

regulatory regimes surrounding these matters, including corporate, commercial and trade competition laws.

She is a member of the Thai Bar Association and is a lawyer licensed with the Lawyers Council of Thailand. Charunun writes and presents on the topic of doing business in Thailand.

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