



AMCHAM THAILAND

# TAB Thai-American Business

Journal of The American Chamber Of Commerce In Thailand

Volume 6/2013



## Corporate Governance

- 14 Dr. Bandid Addresses Corruption and Corporate Governance
- 16 Directors' Legal Duties and Good Corporate Governance
- 18 Good Corporate Governance Benefits Investors
- 31 AMCHAM Congratulates 2013 CSR Award Recipients

Two Nations. One Friendship.  
**180** Years

180 Years of Thai-U.S. Relations

# Directors' Legal Duties and Good Corporate Governance

Written by: Kobkit Thienpreecha

Legal duties of directors are “must do’s”, and good corporate governance (CG) principles are “should do’s”. Thus, breach of legal duties leads to liability (civil and/or criminal) while mere non-compliance with CG principles does not.

Legal duties have been imprinted in Thailand company law and are compulsory for directors of all companies. For decades, they have not been materially amended or developed except for the major amendment to the Securities and Exchange Act in 2008 which largely amplified the duties and responsibilities of directors and executives of publicly traded companies.

Principles of Good Corporate Governance were formulated by the Stock Exchange of Thailand first in 2002, amended in 2006 to be in line with OECD principles and subsequently changed again in 2012. CG principles are suggested best practices exclusively designed for listed companies.

## DIRECTORS' LEGAL DUTIES

Company directors are chosen and appointed by the general meeting of the shareholders to manage the company on their behalf. Accordingly, the concept of trust and trustee implicitly come into play and directors are charged with fiduciary legal duties which could be classified into four types:

### a) Duty of Care

Directors must act with the diligence and prudence of a person in a simi-

lar circumstance. Decisions must be made on an informed basis.

### b) Duty of Obedience

Directors must ensure that the company complies with the laws, Objectives, Articles of Association and resolutions of its Board of Directors and shareholders. Every company has similar standard compliance duties, such as corporate duties, tax filings, etc. Some companies carrying on special or regulated businesses would, in addition, be subject to specific laws and regulations.

### c) Duty of Loyalty

Directors must act in good faith for the best interest of the company and avoid conflict of interest.

### d) Duty of Disclosure

Directors must provide accurate, adequate, truthful and up-to-date information to shareholders and in a timely manner

Public companies, especially listed ones, are subject to a combination of company law, securities law and market regulations; hence fiduciary duties of their directors are far more intensive and stringent than private companies. Directors can see for themselves that most of these duties are prescribed under the laws in broad principles rather than a checklist of actions. There are neither further descriptions nor many court case precedents for reference. Complying or acceptable practices have to be interpreted on a case-by-case basis.

Breach of fiduciary duties by directors gives no one but the shareholders and creditors the right to sue the directors and hold them civilly liable for damages suffered by the company or such creditors. However, due to the major legal reform in 2008, such breach is now also criminally punishable and the shareholders or the Securities and Exchange Commission could bring a charge against the wrongdoing directors of publicly traded companies.

## GOOD CORPORATE GOVERNANCE

According to the Good Corporate Governance Committee set up by the Stock Exchange of Thailand (SET), corporate governance is defined 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.” Therefore, directors are intermediaries with a key role in developing good CG in the company. In 2012 CG principles, there are five topics and more detailed descriptions on recommended practices:

### 1) Rights of Shareholders

Directors should protect fundamental rights of shareholders and encourage them to actively participate in shareholders’ meeting without restrictions. Suggestions include giving a chance to propose agendas, allowing sufficient time for Q&A at the meeting, fully detailed minutes and disclosure of resolutions on the company’s website, for example.

### 2) Equitable Treatment of Shareholders

Directors should treat shareholders without discrimination. Minority shareholders should be attended to and not be taken advantage of, which means that directors should prevent self-

*Principles of Good Corporate Governance were formulated first in 2002, amended in 2006 to be in line with OECD principles and subsequently changed again in 2012.*

dealing transactions or insider trading. Best practices are, for example, to allow minority shareholders to nominate a director, make notices in Thai and English, make written measures to prevent abuse of internal information and disclose interest of directors.

### 3) Role of Stakeholders

Directors should respect and cooperate with stakeholders, e.g. customers, employees, trade partners, creditors, shareholders, society, government, competitors and auditors. It is recommended to set clear policies on dealing with each group of stakeholders, to have an open channel for submission of complaints or reports of illegal or unethical activities and protect the informant and file CSR reports.

### 4) Disclosure and Transparency

Directors should ensure disclosure of financial and non-financial information accurately, completely and timely with transparency. Recommended practices are to set clear disclosure policies, disclose and explain compliance and non-compliance of company's policies, disclose information on the company's website and have investors relations unit.

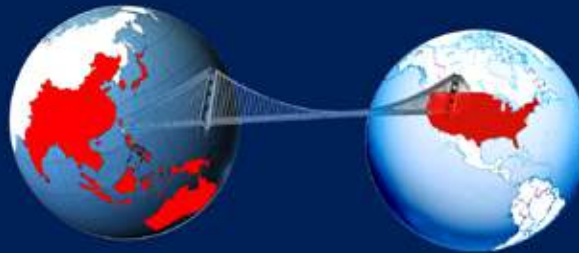
### 5) Responsibilities of the Board

The Board should consist of independent and accountable directors. Good practices are to have a total number of Board members between 5-12, a diversified Board composition, separate Chairman & CEO, nomination committees and compensation committee,

active participation and dedication to Board meetings and a competent company secretary.

By comparison, directors may realize that the five CG principles were created based on the standard legal duties and go beyond as their goals to build confidence of investors and sustainable growth of the company. Companies with good a CG rating have proven to perform well in the stock market. Compliance with legal duties is no doubt vital, but ability to meet CG principles is increasingly important and the directors should make that their mission. ■

*Kobkit Thienpreecha is a Partner in the corporate and commercial group at Tilleke & Gibbins. He can be contacted at: kobkit.t@tilleke.com.*



## ASIA'S RESURGENCE AND AMERICA'S ROLE

2014 APCAC Spring Summit | March 19-21, 2014 • Manila, Philippines

### *Dear AmCham Members, Friends and Colleagues,*

From March 19-21, 2014, the Asia Pacific Council for American Chambers (APCAC) conference will be held in Manila at the New World Makati Hotel. Every year the APCAC conference is held in a different regional city, and AmCham Philippines is delighted to host it in Manila. Please mark your calendars.

President Aquino has been invited as one of the key-note speakers, along with other officials from the Philippines and the United States.

Organized in 1968, APCAC represents over 40,000 business executives and over 6,600 business entities in 28 regional countries and cities.

Further details and registration fees will be sent out shortly.

*Sincerely,  
Ebb Hinchliffe  
Executive Director  
AmCham Philippines*