Corporate Governance

Jurisdictional Comparisons

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1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of corporate governance principles in your jurisdiction? State also whether your legal system is based on common law or civil law.

Thailand’s legal system is based on civil law, and the general principles of corporate governance (CG) in Thailand regulate the relationship between the board of directors of a company, its management team, and its shareholders in guiding the company and monitoring its operation.

A company with good CG principles will establish a transparent working environment to enhance the company’s competitiveness, to preserve capital, and to increase its shareholders’ long-term value from their investment. This also means that the company has efficient, transparent and audited management systems that create trust and confidence among its shareholders, investors, and all related parties. At the core of CG is the role of the board of directors in managing business operations by monitoring, directing and controlling the management in order to serve the interest of the shareholders. The directors are acting as the link between the shareholders and management, and thus have an essential role in establishing good CG. Good CG also dictates the company’s rules, regulations and mechanisms which ensure the protection of the rights of the shareholders.

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

Recently, a World Bank report analysed Thailand’s CG framework. This report on the observance of standards and codes confirms that Thailand is a regional leader in CG with a relatively comprehensive framework and has achieved high levels of compliance in a number of key areas.

Corporate governance reform has been a priority since the 1997 Asian financial crisis. The Thai government designated 2002 as a year of good CG. On 5 February 2002, the cabinet appointed the National Corporate Governance Committee (NCGC) to set out policies, measures and schemes to upgrade the level of CG in Thai business. The NCGC consists of the Prime Minister or assigned Deputy Prime Minister as the chairman with committee members that consist of representatives from the Ministry of Commerce, the Ministry of Finance, the Bank of Thailand, the Securities Exchange Commission, the Stock Exchange of Thailand, and the industrial sector.

In 2002, the Stock Exchange of Thailand (SET) set out the Principles of
Good Corporate Governance (Principles) as a guideline for listed companies to implement. In 2006, the Principles were revised to be comprehensive and comparable to the Principles of Corporate Governance of the Organisation for Economic Cooperation and Development (OECD) and recommendations in the World Bank’s Reports on the Observance of Standards and Codes (CG-ROSC).

Listed companies are required to disclose the implementation of the said Principles in their annual report, including their reason(s) for non-implementation.

In July 2002, the SET had set up the Corporate Governance Center to provide consulting services to and exchange ideas about CG practices with directors and executives of listed companies.

Per the incorporation of the private sector, the Thai Institute of Directors was established in 1999 and has provided director training and knowledge to board members to enable them to perform their duties and responsibilities efficiently, and meet good CG standards.

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

In practice, most cases were settled at the Office of the Securities and Exchange Commission by the payment of fines for varying offences. These offences include non-compliance with business conduct of business operators, failure to submit financial statements of the listed companies, failure of securities holding of directors and executives, dissemination of false or misleading information, market manipulation, and insider trading and takeover.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

The Department of Business Development (DBD) in the Ministry of Commerce has authority over all companies and is in charge as a record keeper. The Securities and Exchange Commission (SEC) is responsible for oversight of securities companies and has authority over public limited companies whose shares are listed on the SET (listed companies) and other issuers, dealers, brokers and fund managers. The Bank of Thailand (BOT) has authority over commercial banks and other lenders. The BOT can issue regulations and guidelines, conduct examinations and inspections and also has the power to take enforcement actions. The SEC’s powers include administrative actions such as dispensing warning letters, fines, and implementing suspension and removal of licences.

However, the SEC may not initiate civil actions in court and may not exact damages on behalf of the shareholders. The SEC has no prosecutorial powers, but it may refer criminal cases to the inquiry official of the Economic Crime Investigation Division of the Royal Thai Police or the special investigator of the Department of Special Investigation in the
Ministry of Justice.

Additionally, the SEC can take enforcement actions related to takeovers, market manipulation, insider trading, and corporate fraud. In February 2012, the courts sentenced 26 defendants in two cases for fraud in listed companies. It also actively enforces securities rules not directly related to CG.

2. SOURCES OF LAW
2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?
Company laws in Thailand include the Thai Civil and Commercial Code, usually referred to as the CCC, for private companies, and the Public Limited Companies Act B.E. 2535 (1992) as amended up to No. 3 B.E. 2551 (the PLC) for public limited companies. In addition, public limited companies whose shares are listed on the SET and companies that are issuing securities to the public shall comply with the Securities and Exchange Act B.E. 2535 as amended up to No. 4 B.E. 2551 (2008) (the SEA) and notifications of the SET and the Capital Market Supervisory Board of the SEC. In addition, laws governing specific business apply to certain types of business such as (i) the Banking Act for banking and finance businesses, and (ii) the Life Insurance and the Assurance Business Act for life and property insurance businesses, etc.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

2.3 Are there any public interest laws which apply to or influence corporate governance?
Generally, the CCC states that an act is void if its object is expressly prohibited by law or is impossible or is contrary to public order or good morals. The said provision covers the public interest transaction which applies to every person.

In addition, there are specific laws governing specific business, such as the Banking Act, Insurance Act, Factory Act, Customs Act, Revenue Code, Food and Drug Act, Environment Act, Industry Act, etc. The provisions of these laws specify that an operator must also manage its business in a manner that complies with these specific laws. Practically, the operator must consider and set the rule outlining the responsibilities or proper practices as a code of conduct. The operator and/or its representatives shall be liable for civil and/or criminal penalty if they fail to comply with specific laws.

2.4 Have there been any recent developments in any of the above
laws? What are the recent changes to the above laws or rules and the reasons for such changes?

The amendment to the Securities and Exchange Act B.E. 2535 (1992) No. 4 B.E. 2551 (2008) reinforces the commitment to CG development of all parties in the capital market and the efficiency of the SEC’s supervision. The said amendment modifies the governance of publicly traded companies, the duties and responsibilities of the directors and executives, and the shareholders’ meeting.

3. SHAREHOLDERS AND THE SHAREHOLDERS’ MEETING

3.1 How are shareholders’ interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders’ meeting?

The meeting of shareholders is the highest governing body in the company management hierarchy. Under the CCC and PLC Act, the shareholders have the basic right to control the company by attending and voting at the shareholders’ meeting for matters that are proposed by the board of directors.

According to law, there are specific matters that require an approval of the shareholders’ meeting. In ordinary cases these require a majority vote of the shareholders who attend the meeting and cast their votes. In case of a deadlock, an equality of votes, the chairman of the meeting shall cast an additional vote as the deciding vote. Certain cases require a vote of not less than three-fourths of the total number of votes of shareholders who attend the meeting and have the right to vote. This includes the increase or decrease of capital and amendment of the memorandum of association or the articles of association.

In addition, the PLC Act prescribes certain essential matters that require the votes of not less than three-fourths of the total number of votes of shareholders who attend the meeting and have the right to vote:

- the sale or transfer of the whole or important parts of the business of the company to other persons;
- the purchase or acceptance of transfer of the business of other companies or private companies by the company;
- the making, amending or terminating of contracts with respect to the granting of hire of the whole or important parts of the business of the company;
- the entrustment of the management of the business of the company to any other person; and
- the amalgamation of the business with other persons with the purpose of profit-and-loss sharing.

There may be additional requirements according to each company’s articles of association.

The Capital Market Supervisory Board’s regulations specify additional rules that require a listed company to seek an approval of the shareholders’ meeting for significant transactions such as the acquisition or disposal.
of material assets, or a connected transaction between the company and connected persons.

With regard to the right for requesting an extraordinary meeting of shareholders, under the CCC, the shareholders holding not less than one-fifth of the shares of a company may request in writing to the board to call for a shareholders’ meeting. For a public limited company, the shareholders holding shares amounting to not less than one-fifth of the total number of shares sold or shareholders amounting to not less than 25 persons holding shares amounting to not less than one-tenth of the total number of shares sold may, by subscribing their names, request the board of directors to call an extraordinary meeting at any time, but the reasons for calling such meeting shall be clearly stated in such request. In this regard, the board of directors shall proceed to call a meeting of shareholders to be held within one month from the date the request is received from the shareholders.

Under the SEA, shareholders who hold shares and have the right to vote amounting to not less than 5 per cent of the total number of the voting rights of the company may submit a written proposal in order to request the board of directors to include such proposal as an agenda of the shareholders’ meeting.

3.2 How is the shareholders’ meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

The board of directors shall call a meeting of shareholders which is an annual ordinary meeting of shareholders within four months of the last day of the accounting year of a company. Any meetings of shareholders other than this shall be called extraordinary meetings. The chairman of the board shall preside over the meetings of shareholders. If there is no chairman or there is a vice-chairman, but such vice-chairman is unable to perform his or her duty, the shareholders present shall elect one among themselves to preside over the meeting.

For a quorum of the shareholders’ meeting, at least one-fourth of the capital of the company is required for a limited company according to the CCC. For a public limited company, the quorum would be at least 25 persons or not less than one-half of the total number of shareholders, and in either case, such shareholders shall hold shares amounting to not less than one-third of the total number of shares sold according to the PLC Act.

Under Thai laws, only shareholders have the right to join the meeting and exercise their vote. Nevertheless, they can assign their rights to other persons by following the rules regarding for proxy in the CCC, PLC Act and SEC accordingly. A person without a proxy or approval from the company cannot participate in the meeting.

Nonetheless, there can be ‘proxy solicitation’ where the proxy solicitor requests to attend the meeting and vote on the behalf of the shareholders. It is recognised in practice; however, the proxy solicitor must comply with the specific SEC rules such as the clear scope of the influences to be used.
in the decision-making in writing, the realm of the decision, and reliable identification of the proxy solicitor.

3.3 How are minority shareholders’ rights protected?
Shareholders’ protection rights are listed in the CCC, PLC Act and SEA. For example, minority shareholders may:
• request in writing to the board to call for a shareholders meeting;
• request the competent officer to appoint an inspector to examine the business of company;
• receive the notice of shareholders’ meeting in advance not less than seven days for general matters; 14 days for some issues such as increase or decrease of capital and amendment of the articles of association and memorandum of association;
• file a motion with the court to cancel any resolution passed at irregular general meeting; and
• bring a derivative suit to the court to claim compensation on behalf of the company against directors.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?
Shareholder activism is encouraged and regulated and prescribed by the CCC, SEA and SEC, including but not limited to the:
• right to propose agendas for the shareholders’ meetings;
• right to bring an action against the directors and executives for illegal or unethical acts by the company to court;
• veto rights on employee stock plans (no veto right from shareholders higher than 5–10 per cent), and discounted securities offering securities (no veto right from shareholders higher than 10 per cent).

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders’ meeting? Are they criminally or otherwise publicly sanctioned?
There are no specific regulations regarding professional shareholders in Thailand. Nonetheless, should any shareholder act in a way that could cause a disruption to, negatively influence, or act in bad faith to the company, an authorised director can exercise his or her rights on the behalf of the company to proceed with a civil or criminal lawsuit against such shareholder.

3.6 Are shareholders’ benefits given to some of the shareholders by the company without resolution by the shareholders’ meeting prohibited or regulated by the law or other rules?
The CCC does not stipulate any legal requirement for giving benefits to shareholders. On the other hand, the SET issued regulations regarding connected transactions between a listed company and its major shareholders.
(holding at more than 10 per cent of the issued shares with voting rights including shares held by related persons) whereby such must be disclosed to or approved by the board of directors or the shareholders’ meeting.

The SEC deems that a connected transaction may lead to a conflict of interest between a listed company and a connected person. The company must ensure transparency when making a decision to enter into a connected transaction and to ensure that a listed company has means to eliminate the conflict of interest with honesty and integrity in a sound, ethical and independent framework together with complete disclosure. The procedure requirements depend on the types of transactions and transaction value, ie, disclosure to the SET. These are transactions that exceed more than either 1 million Baht but less than 20 million, or 0.03 per cent but less than 3 per cent of net tangible assets, whichever is higher. For shareholders’ approval, the requirement is for transactions exceeding 20 million Baht or 3 per cent of net tangible assets, whichever is higher.

4. DIRECTORS AND BOARD OF DIRECTORS
4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one- or two-tier board system? What are the outside directors called?

Thai companies have a one-tier board system. For every category of Thai company, the board of directors has the power and duty to manage the business of the company in accordance with the company’s business objectives, articles of association, and shareholder resolutions, and to perform their duties with loyalty and care to preserve the interests of the company. The scope of powers and duties of the board of directors will depend on the articles of association and the shareholders’ resolutions of those companies.

A public limited company must have a board of directors that consists of at least five directors to conduct the business of the company with not less than half of whom must reside within the kingdom. There must be no restrictions to prevent a shareholder from becoming a director. The board of directors shall hold a meeting at least once every three months in the locality in which the head office of the company is located or in a nearby area, unless it is stipulated in the articles of association that the meeting can be held elsewhere.

The SEA Amended No. 4. B.E. 2551 (2008) provides a clearer scope of the duties and liabilities of directors and executives. Any matter approved by the director or executive that, at the time of considering such matter, his/her decision has met the following requirements shall be deemed that the said director or executive has performed his/her duty with responsibility and due care (this is an equivalent to the ‘business judgment rule’) – honestly, made with reliable information, and sincerely believed to be sufficient and without conflict of interest.

According to the SEC rules, the directors, management, executives, and auditors of listed companies shall prepare a report for the SEC on their securities holdings, their spouses’ and any minor children’s holdings.
4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

Under civil law, directors are legally responsible to the company and shareholders.

Under the legal responsibility to the company, if the company or shareholders believe that the directors caused damages to the company, the company or shareholders may file a derivative suit against a director.

For liabilities under criminal law, when the company violates the law (e.g., failure to file relevant documents as required by law, insider trading, etc.), the law imposes the penalty and the director responsible for its operations shall be subject to the penalty as well. There are illegal acts by individuals, e.g., fraud, scams, or insider dealings, and in such cases, any director committing an offence can be prosecuted. The punishment for such offences appears in the PLC Act and the SEA. Directors of listed companies are liable for more severe penalties under the SEA than those of non-listed public companies, for instance, a fine penalty and 5–10 years’ imprisonment in case of fraud or swindle, since the public’s invested in such a company.

4.3 Does the board of directors have a committee system, e.g., nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

For a limited company and a public limited company whose shares are not listed on the stock market, there is no requirement to set up a sub-committee. Only listed companies require an audit committee which must consist of at least three independent directors according to the SEC notification.

An audit committee has duties as delegated by the board of directors and include basic responsibilities, such as: reviewing the company’s financial reporting process to ensure that it is accurate and adequate; reviewing the company’s internal control system and internal audit system; reviewing the company’s compliance with the law on securities and exchange, the Exchange’s regulations, and the laws relating to the company’s business; and preparing and disclosing the company’s annual report. In its performance of such duties, the audit committee must be directly responsible to the company’s board of directors, while the company’s board of directors shall remain responsible to third parties for the operations of the company.

In its performance of duties, if it is found or suspected that there is a transaction or any of the listed acts which may materially affect the company’s financial condition and operating results, the audit committee shall report it to the board of directors for rectification within the period of time that the audit committee deems fit.

If the company’s board of directors or management fails to make rectification within the period of time, any audit committee member may report the transaction or act to the Office of the SEC.

In addition, the Principles 2012 recommend that a remuneration committee and a nomination committee should be set up. However, this is
not a mandatory requirement.

4.4 Is it a legal requirement to have an independent director or a third-party director? If so, how are they appointed? Is it required for listed companies?
For a limited company and a public company, the laws do not stipulate the requirement of a third-party director. Nonetheless, for a listed company, at least one-third of the total board members of the company must comprise independent directors but no fewer than three independent directors. The SEC’s regulation states the specific qualifications for the independent director itself in order to maintain its independence that include not holding more than 1 per cent of the company’s shares and not having an occupation with inappropriate relations with the company’s business, ie, an auditor or a lawyer.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?
According to the PLC Act, a public limited company shall not pay money or give any property to a director unless it is a payment of remuneration under the articles of association of the company. In the case where the articles of association of the company do not stipulate such payment, the payment of remuneration shall be in accordance with the resolution of the meeting of shareholders based on a vote of not less than two-thirds of the total number of votes of the shareholders attending the meeting.

According to the Principles, board remuneration should be comparable to the industry level in which the company operates, and reflect the experience, obligations, scope of work, accountability and responsibilities and contributions of each director. For the remuneration of top executives that does not require obtaining an approval from the shareholders’ meeting, the said principle provides that the remuneration should be in accordance with the board of directors’ policy and within the limits approved by the shareholders. For the best interest of the company, all executive salaries, bonuses and other long-term compensation should correspond to the performance of each given executive.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?
There are no regulations or other guidelines in this regard. This may vary according to each company’s policies regarding to ‘damage control’ without derogating from the disclosure requirements for the public.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS
5.1 How is the internal accounting and legal audit structured and
conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor each five years?

A limited company is required to hire an external licensed auditor, and the auditor shall be elected every year at an ordinary meeting of shareholders. The auditor shall not be a director, staff, employee or person holding any position or having any duty in the company. With regard to listed companies, they must have an auditor approved by the SEC as their auditor. The SEC rules require audit partners with a particular client to rotate after five years. Note that the audit committee of a listed company’s board should choose the auditor and propose the same to the board of directors for consideration and further propose his/her appointment to the shareholders’ meeting for consideration and approval.

5.2 Do you have supervisory auditors? What is the function of the supervisory auditors’ board?

Not applicable.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

As required by law, all companies must prepare audited financial statements. There are different requirements for each company category. A public limited company is required to prepare a board of directors’ report which contains the following details subject to the particulars as prescribed in the Ministerial Regulations:

- the name, location of the head office, category of business, number and type of all the shares sold of the company including the number and type of shares of affiliated companies held by the company or private company in which the company holds 10 per cent or more of the number of shares sold of such other company or private company (if any);
- the interest of directors in any contract made with the company and numbers of shares held in the company; and
- remuneration, shares, debentures, or other benefits which directors receive from the company, together with the names of directors.

A listed company has the duty to disclose any information which may affect the market price of the listed company, investors’ decisions or shareholders’ interests. There are certain compulsory disclosures that are required by law or the SET’s regulations:

- Periodic disclosure: financial statements, ie, (i) quarterly financial statements, (ii) yearly financial statements, (iii) annual registration information, and (iv) annual reports.
- Non-periodic disclosures: at the occurrence of an important event, eg, acquisition of sale of significant assets, connected transactions,
mergers and or consolidation, change in shareholder structure, increase or decrease of capital, declarations of payment or non-payment of dividends, a change in any key management, a change in the company’s objectives, etc.

In addition, a listed company shall employ reasonable procedures to ensure that all who invest in its securities enjoy equal access to such information. To comply with this fundamental principle, the SET issued the Disclosure Guidelines for Listed Companies’ Management in 2005, which covers the following matters:

- immediate public disclosure of material information;
- thorough public dissemination;
- clarification or confirmation of rumours and reports;
- response to unusual market activity;
- unwarranted promotional disclosure; and
- insider trading.

### 6.2 What is the liability or responsibility of the board in relation to the company’s disclosure requirements?

In any company, non-compliance with the disclosure rules, such as the non-filing of audited financial statements, brings a fine penalty against the company and also the authorised directors. The fines will be imposed on the company and the authorised directors.

For a listed company under the SEA Act, the directors and the executives must provide information or any other reports in relation to the business prepared by the company for the purpose of disclosure to shareholders or the public as specified in the notifications of the Capital Market Supervisory Board and the SET.

### 7. M&A AND CORPORATE GOVERNANCE

#### 7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?

In terms of a merger and acquisition of assets or shares, certain disclosures and voting rules and requirements will apply. For example, according to the PLC Act, a public limited company must obtain a vote of not less than three-fourths of the total number of votes from shareholders who attend the meeting and have the right to vote in the following cases:

- the sale or transfer of the whole or important parts of the business of the company to other persons;
- the purchase or acceptance of transfer of the business of other companies; and
- the making, amending or terminating of contracts with respect to the granting of a hire of the whole or important parts of the business of the company, the entrustment of the management of the business of the company to any other person or the amalgamation of the business with other persons with the purpose of profit-and-loss sharing.

In addition, the Capital Market Supervisory Board’s regulations specify
additional rules that require a listed company to seek an approval of the shareholders’ meeting for acquisition or disposal of assets that value transaction calculated an amount exceeding 50 per cent.

The amalgamation of a limited company must obtain an approval from the shareholders’ meeting as a special resolution. The votes shall not be less than three-fourths of the total number of votes of the shareholders attending the meeting. Note that before such shareholders’ meeting, a board of directors’ meeting must be convened to call such shareholders’ meeting. Later on, the company shall notify its creditors in writing and also publish in a newspaper the resolution of the amalgamation and specify in the notification that any objection thereto shall be submitted within 60 days of the convened meeting.

The amalgamation of a public limited company under the PLC Act requires a resolution of the shareholders’ meeting by a vote of not less than three-fourths of the total number of votes of the shareholders attending the meeting and having the right to vote, and in the case of an amalgamation with a private company, a special resolution of the shareholders’ meeting as prescribed in the CCC is required. Moreover, once the board of directors of the listed company resolves to allow the company to amalgamate with the other, the listed company is also required to disclose information in accordance with the relevant regulations of the SET.

In the case where a shareholder raises an objection to the amalgamation, the company shall arrange for the purchase of shares belonging to such shareholder. If such shareholder does not agree to sell his or her shares within 14 days from the date of receipt of the purchase offer, the company shall proceed with the amalgamation, and it shall be deemed that such shareholder is a shareholder of the company formed by the amalgamation.

For a public limited company, it shall notify its creditors in writing of the resolution of the amalgamation within 14 days from the date on which the meeting of shareholders passes such resolution and shall specify in the notification that any objection thereto shall be submitted within two months from the date on which the creditors received the notice of such resolution. The company shall also have the notice of such resolution published in a newspaper within the above-mentioned 14-day period. If an objection is raised, the company cannot be amalgamated unless it has paid its debts or given security for the debts.

8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or what other items? How is it regulated under the company law or market regulations?

Vote lobbying for the shareholders’ meeting is prohibited under Thai law. Nevertheless, the SEA provides that solicitation, leading, or doing any act in a general manner to the shareholders of the company with a view to enticing the shareholders to give proxy to the person doing such act or any other persons to attend and vote at the shareholders’ meeting on their behalf, shall comply with the rules, conditions and procedures as specified in
the notification of the Capital Market Supervisory Board.

So far, there are no court rulings or SEC opinions as to the issue of proxy fighting as customary in other jurisdictions, eg, the USA, etc.

9. OFFICERS’ REMUNERATION RULES
9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders’ meeting? Is there any mechanism for an independent body to review and evaluate them?
See paragraph 4.5.

9.2 Is the mechanism of officers’ remuneration publicly debated?
No. It is based solely on the company’s associations, the meeting of shareholders and the special remuneration committee (not in every company) that determines the remuneration of the officers.

10. DIRECTORS’ LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION
10.1 What are the directors’ responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?
Under the CCC, PLC Act and SEC, there are similar principles regarding acts of the directors. The main responsibilities are conducting the business of the company to comply with the laws, the objects and the articles of association of the company, and the resolutions of the meeting of shareholders, in good faith and with care to preserve the interests of the company, and the directors cannot compete against the normal business of the company. Thus, the details vary depending on the company category and are detailed in the PLC Act and SEA.

Directors’ and officers’ insurance provides coverage for claims brought against the directors and officers of a company for actual or alleged breach of duty, neglect, misstatements, error and omissions. Typically, coverage includes advancement of defence costs granted prior to final disposition of a claim for individuals when the company cannot provide such costs, and reimbursement for indemnification of directors and officers for any judgments, settlements and defence costs associated with the cover claims when the company has indemnified the insured the insured for loss.

11. SHAREHOLDERS’ DERIVATIVE SUITS
11.1 Is a shareholder’s derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?
Generally, under Thai law, shareholders’ derivative suits are available only for a civil claim for damages against the director(s) of a company, not a third party, who cause damage to the company. The derivative suit can be made by the shareholder only once it is found that the company itself fails to do so.

However, there are some different criteria for instigation of a suit against a director under the applicable laws, such as the CCC, PLC and SEA.
For instance, any shareholder of a limited company is authorised by the CCC to file a court suit against the director, regardless of the minimum required number of shares held by such shareholder. For a public limited company, shareholder(s) holding shares amounting to not less than 5 per cent of the total number of company shares sold could instigate a civil claim against the director of a public limited company according to the PLC. The shareholders may apply for a court order for the removal of such directors.

In addition, the SEA, which is mainly applicable to a listed company, requires that such claim can be made by any one or more shareholders holding shares amounting to not less than 5 per cent of the total number of voting rights of the company. The shareholder who instigates such a court case for the company may receive an actual and reasonable expense claim as the court thinks fit.

11.2 Have there been any recent relevant court cases on the subject?
The most recent case is Dika 2481/2552. The case held the position that the derivative suit against the director should be filed only when the company refuses to file for damages against such director. Moreover, the derivative suits must be filed against the director, not a third party. Additionally, the claim must be for compensation only.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR
12.1 How is a company in your country expected to deal with the following issues? Corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?
The SET’s focus on corporate social responsibility (CSR) started as early as 2006 when a CSR Working Group was established. The SET also has a CSR Club, established in 2009, that helps promote CSR among listed companies by sharing information, knowledge and best practice.

The guidance document is largely based on ISO 26000, but draws on a number of international CSR instruments including the UN Global Compact and GRI. It also integrates social responsibility with other relevant principles and guidelines for Thai companies. The details herein include organisational governance, human rights, labour practices, the environment, fair operating practices, consumer issues, community development with additional specific emphasis on anti-corruption and communication and reporting. A breakdown of the samples of the regulations related to is as follows:

- Gender, Racial and Social Diversification: Labor Act B.E. 2551.