

# Thailand Feature

## **Corporate Social Responsibility Guidelines and Mandatory Information Disclosure in Thai Listed Companies**

### *A Struggle to Comply with International Standards*

Corporate Social Responsibility (CSR) has gained attention in the field of business management in Thai companies for decades. The export-oriented companies have been concerned of CSR in order to fulfill the terms of contract stipulated by multinational global supply chain. Nevertheless, it is not until the 2009 that it was emphasized in the regional cooperation. Thailand has been part of the Association of Southeast Asian Nations (ASEAN), which aims to establish ASEAN Community in 2020. To achieve this, the Roadmap for ASEAN Community 2009-2015 was launched. This includes the Blueprint for an ASEAN Socio-Cultural Community where CSR is taken as one of a strategy to realize the ASEAN Community that is people centered and socially responsible. The Blueprint states that CSR shall be incorporated in the corporate agenda and to contribute towards sustainable socio-economic development in ASEAN Member States. In doing so, the member states should encourage the adoption and implementation of international standards (C.3).

Pursuant to the Blueprint, Stock Exchange of Thailand (SET), and Securities Exchange Commission (SEC) have issued the CSR Guideline, which covers the concept of ISO 26000, UN Global Compact, and Global Reporting Initiative, as well as including the concept of Sufficiency Economy initiated by King Bhumipol and the anti-corruption program<sup>1</sup>. At first the adoption of the guideline was not compulsory, so the incompliance of the guideline did not result in any legal effect until the new rules of information disclosure for listed companies have been released. The new rule requires all companies to disclose the information regarding CSR and has been in effect since the fiscal year of 2013. This article aims to examine the CSR information disclosure scheme to testify the Thai securities regulators' effort to enhance the awareness of CSR in listed companies in SET<sup>2</sup> to reach the international standards. First of all, I would review the shareholder-centric ideology of Thai corporate governance to explain the stance of CSR information disclosure. Subsequently I shall examine the mandatory information disclosure to find out whether it helps listed companies be aware of the role of stakeholders or be more enthusiastic to undertake more socially responsible practice. This feature is limited to the effectiveness of the disclosure rule of CSR policies in general, and would not cover the focus on anti-corruption policies or the details of the Thai-made CSR code.

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1 Corporate Social Responsibility Institute. *Corporate Social Responsibility Guideline* (Magic Press, Bangkok 2012) 4

2 This paper therefore shall not include the small-medium companies-oriented Market for Alternative Investment (MAI) which contain several different rules from those registered in SET.

## I. CSR AND THE CORPORATE GOVERNANCE

CSR covers a wide spectrum and there is no consensus on the meaning of the term. During the early ages CSR was perceived only as a philanthropic activities oriented by the preference of each businessperson, in order to give the impression that they are good corporate citizen<sup>3</sup>. In contrast, nowadays CSR definition tends to be more incorporated with the core business of the company in order to establish the sustainable development benefiting the society as well as the firms. Such idea is reflected in business scholarship, such as the introduction of the shared value concept by the known business scholar Michael E Porter,<sup>4</sup> in the regional cooperation<sup>5</sup>, and in the international standards.

However, as a concept CSR directly challenges the Anglo-American paradigm of corporate governance, in terms that whether a company should be run for the profit maximization of shareholders, or whether other stakeholders should be equally valued with shareholders. Therefore, there might be a resistance against the policy makers if they decide to require direct participation of other stakeholders groups in the management, or impose legal duties on directors that would benefit groups other than shareholders. As a result, instead of the direct enforcement, the government may encourage CSR activities by requiring the companies to make a public disclosure regarding to the compliance of CSR guidelines or code of conducts, and CSR policies or concrete activities<sup>6</sup>.

A basic assumption of the disclosure strategy is that a company's interests- and the interests of its shareholders- are best served by maintaining a positive CSR profile. It is assumed that CSR activities could create firm value as they strengthen a company's relationship with its key stakeholders and because they make the company more attractive to potential customers. This would positively affect a publicly-traded company's share price; if investors believe that disclosure of information demonstrating that a company has a good CSR record will enhance the value of a company, this will be reflected in the price investors are willing to pay for the companies share<sup>7</sup>.

This could explain why disclosure approach is taken to promote CSR in Thai listed companies, as Thai corporate governance is highly influenced from Anglo-American system. Company law in Civil and Commercial Code (CCC) has taken after UK Company Law<sup>8</sup>, while the first Public Company Act (PCA) has been drafted and proposed by Columbia professor Sidney M Robbins, a previous US Securities Exchange Commission officer. Considering the

3 For the development of the definition of CSR, see Archie Carroll, 'A History of Corporate Social Responsibility Concepts and Practices' in Andrew Crane (eds.), *The Oxford Handbook of Corporate Social Responsibility* (OUP, Oxford 2008).

4 The companies need to search for shared value, a policies and operating practices that enhance the competitiveness of a company while simultaneously advancing the economy and social conditions in the communities in which it operates. See also Michael Porter and Mark Kramer, 'Creating Shared Value' (2011) 2, 5

5 Such as A Renewed EU Strategies 2011-14 for Corporate Social Responsibilities, Strategy 3.1.

6 Kevin Campbell and Douglas Vick, 'Disclosure law and the market for corporate social responsibility' in Doreen McBarnett and others, *The New Corporate Accountability* (CUP, Cambridge 2007).

7 Ibid.

8 For the history of Thai company law and the registration, see also Department of Business Development, '111 Years of Thai Partnership and Company'.

definition of company and the objectives stipulated by both legislations<sup>9</sup>, it could be concluded that under Thai law the company, either private, public, or listed, should be run for the benefit of shareholders. Therefore, the adoption of CG code, CSR guideline, and the mandatory information disclosure could be a key legislative tool to promote CSR in Thai listed companies.

## II. CSR INFORMATION DISCLOSURE IN THAI LISTED COMPANIES

Section 56 of Securities Exchange Act, and the Capital Market Supervisory Committee Notification No. Tor.Jor 11/2552 require listed companies in SET to disclose the information concerning other stakeholders via a financial statement (Form 56-1), an annual report (Form 56-2) and a prospectus (Form 69-1). The items relevant to stakeholders and CSR are similar in these three documents, and are stipulated in Corporate Governance (Section 9 in Form 56-1) and Corporate Social Responsibility (Section 10 in Form 56-1).

### A. Section 9: Corporate Governance

Since 2006 the Securities Exchange Act (SEA) has required that a listed company disclose the information regarding the corporate governance in Section 9 of Form 56-1. The company has to disclose whether it has complied with the CG Code stipulated by Securities Exchange of Thailand (SET). The Code comprises of 5 Principles, and their Best Recommendation Practices. It takes after the OECD Principles of Corporate Governance, The Principle relating to CSR is the roles of stakeholders which is stipulated as Principle 3. The disclosure should be done on the comply-or-explain basis, meaning that the target company should disclose whether it has complied with the Principles of the Code, otherwise it should explain a reason why it fails to comply. The ASEAN Corporate Governance Scorecard Country Report and Assessment 2012-2013 examined the efficiency of the 2006 CG code, and pointed out that Thailand had the lowest average score in the Role of Stakeholder. The report specified that Thai listed companies fell short in the disclosure of practices relating health, safety, and welfare of employee, and rarely set up the procedure to deal with complaints from employees about illegal or unethical behavior and the whistle-blower protection system<sup>10</sup>. This caused the descendant 2012 Code to incorporate more stakeholders into the Best Recommendation Practice, such as supply chain management, contributions to community, consumer management, and the anti-corruption program.

Even CG Code is in favor of the shareholder value, it is undisputable that the Code has recognized the crucial roles of other stakeholders. OECD CG Principles recognize other stakeholders and CG should be concerned with finding ways to encourage them to undertake

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9 Article 1012 of CCC provides that a contract for the organization of a partnership or a company is a contract whereby two or more persons agree to unite for a common undertaking, with a view to sharing profits which may be derived therefrom. According to this, the objective of the formation of a company is to gain profits and distribute them to the members, namely shareholders. Such concept also reflects in PCA, which the first Act enacted in 1978 (B.E.2521), stipulates that objectives of it is to increase transparency in business management in order to protect the prospective and current investors.

10 Asian Development Bank, *ASEAN corporate governance scorecard: Country reports and assessments 2012–2013*(Asian Development Bank, Mandaluyong 2013) 57-58

economically optimal levels of investment in firm-specific human and physical capital. Also, The CG Code itself explicitly states that the board of directors should provide mechanisms to promote cooperation between the company and its stakeholders in order to create wealth, financial stability, and sustainability of the firm.

Nevertheless, the disclosure according to CG Code might not effectively encourage CSR activities. Differing from the corporate governance policies in general, board of directors' structure, the governance of the subsidiaries and affiliated companies, Form 56-1 does not require the company to disclose the information regarding the Principle 3. What targeted companies usually do is to clarify the policies towards each stakeholder, so the disclosure could be abstract and lack of detail of concrete action. The new Corporate Governance Scorecard Country Report 2013-2014 also pointed out that Thai companies did not report the actual activities, statistics and figures corresponding the effective implementation of the published policies, and many of them still did not disclose information relating to health, safety and welfare of the company<sup>11</sup>. Therefore the disclosure is not credible evidence whether the disclosing company really took action as the disclosed policy stipulates.

## **B. Section 10: Corporate Social Responsibility**

To encourage CSR more effectively, SEC has established the new section in Form 56-1, which specifically requires the disclosure of Corporate Social Responsibility (Section 10). It requires that a company disclose not only CSR activities rarely relevant to the firm's main business, namely charity and philanthropic activities (CSR-after-process), but also those incorporated with the normal business process (CSR-in-process)<sup>12</sup>. The information includes general policies on CSR (Section 10.1), the operation and the report preparation process (Section 10.2), the business activities that might affect its social responsibility (if any) (Section 10.3), and the environmental and social CSR-after-process activities (Section 10.4).

However, the mandatory information disclosure is not really *mandatory* per se. The format of disclosure is not strictly provided; Form56-1 manual only recommends that a listed company refer to the Sustainability Report Guidelines published by SET, or other international standards including Global Initiative Report. The information could be provided in Form56-1 itself, in the annual report, on the website where the link must be provided on the Form56-1, or in other relevant sections of the Form. As a result, the information disclosure still lacks of unity and might be difficult for investors to review.

Plus, the quality of disclosure could tremendously vary due to the vast gap among the listed companies in SET. The number of registered companies in SET is 668<sup>13</sup>, but the top 50 companies have already possessed 76.5% of market capitalization<sup>14</sup>. As there are both multinational companies and local companies registered in SET, the former would be accustomed to complying with international standards and socially responsible indices like Dow Jones Sustainability Indices, while more than half of the listed companies are the latter,

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11 Asian Development Bank, *ASEAN corporate governance scorecard: Country reports and assessments 2013–2014*(Asian Development Bank, Mandaluyong 2014) 64-65

12 The term CSR-after-process and CSR-in-process is defined by Thaipat Institute Research which conduct the research on CSR on behalf of the SET. See Pipat Yodprudtikan and others, *CSR Development in Business Process: Phase I The Study of Attributes, Components and Tools for Development*.

13 Securities Exchange of Thailand, 'Information of Registered Company –Name List'.

14 Securities Exchange Commission, 'Sustainability Development Roadmap'.

being too small to take CSR is necessary to enter international market. Hence, these companies would find CSR burdensome and not worth investing.

Another factor that would promote CSR in listed companies is institutional investors, but it turns out that this is yet to be a matter in Thai securities market. There might be two possible reasons; the first one is that there is a lack of guidelines on institutional investors. Institutional investors are key players on the support of CSR disclosure, by setting their investing criterion with social screening. To illustrate, the UK 2010 Stewardship Code (Principle 4) and the 2007 Institutional Shareholders' Committee's Principles on the Responsibilities of Institutional Shareholder and Agents (Principle 4) ask institutional investors to take environmental and social risk of the business into consideration when considering the investment. The similar code has not been available in Thailand yet. The second reason is the limited market for social investments. Even though Thai institutional investors voluntarily comply with the aforementioned rule, due to the extremely diversity in company capital scale, they have fewer choices to invest and need to rely on profitable companies though their CSR policies are in skepticism. This consequently lessens the market pressure on the listed companies to take the CSR guideline compliance seriously.

### **III. CLOSING REMARK**

It could be assumed that the new information disclosure rule would be at least increase awareness of small-medium size companies on such issue. The difficult task left for SET and SEC is to harmonize the disclosure format and quality in market where there are the minority multinational firms and the majority local companies with much lower amount of market capitalization. The launch of new requirement might at least raise the awareness regarding the importance of CSR among the small-medium sized listed companies. Therefore, SEC and SET have to allow the room for small listed companies to catch up. That is why now SEC only aims to encourage the firms to disclose the activities regardless of the type of them (CSR-in-process or CSR-after-process), and does not take the failure to disclose the information or the inadequate information disclosure would amount to a fraud.

However, what remains in question is capacity of relevant authorities to evaluate the CSR-related information. Non-financial information relates to a vast field of specialty, which SET or SEC may have no expertise to clarify the accuracy of the information. Accordingly, this disclosure rule might be too hard for the regulators themselves to enforce. NGOs or the institutional investors or other observer might need to file or raise the claim regarding the falsehood. Unfortunately, in the emerging markets, the public sector still has low understanding of human rights, and the NGOs or institutional investors do not have much say to the market. Without such internal force the regulator would find more difficult to enforce the disclosure effectively.

All in all, it is still skeptical whether the mandatory information disclosure in the securities market would genuinely contribute to the betterment of the CSR activities involvement of Thai listed companies.