

# Before going public, get governance in place

## CORPORATE **Counsellor**

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In the first part of this three-part series on April 22, we noted the rush of businesses eager to list on the Thai capital market, spurred by corporate tax reductions among other incentives. However, many companies, notably those that have been family-controlled, lack a comprehensive understanding of the corporate governance requirements that going public will entail.

While companies aspiring to list may be preoccupied with the minutiae of preparing for an IPO, they must also recognise the need to have a good governance structure in place from the outset. The previous column dealt with the first two principles: Corporate Governance Policy and Shareholders' Rights and Equitable Treatment. Today we continue with more key points.

**3. Various Groups of Stakeholders.** Stakeholders means customers, the management, employees, suppliers, shareholders, investors, external auditors, government agencies, competitors and creditors, etc, of the company, each with different rights and functions. The board of directors must ensure that those rights and functions are treated with care and should encourage co-operation between the company and stakeholders.

**IPO issuer:** Most IPO issuers undertake a major reorganisation of the shareholding structure, business transactions and debts. The way business is conducted has to be made more formal and transparent. All business transactions and contracts should

be documented, such as a signed share transfer document for every share transfer, a signed contract for the appointment of a new auditor, sales/distribution agreements with suppliers, loan agreements with creditors, etc. This will not only avoid the risk of potential legal disputes, but it also encourages professionalism.

**4. Shareholders' Meetings.** The chairman of the shareholders' meeting should encourage and allocate adequate time to shareholders to express their opinions and to raise relevant issues based on the agenda. All directors should attend the meeting to answer shareholders' questions.

**IPO issuer:** A significant part of the IPO preparation involves the conversion of a private company to a public company, which requires a special resolution adopted in two shareholders' meetings (called conversion meetings) held in accordance with the Civil and Commercial Code of Thailand, as well as the articles of association of the company. Most private companies were operated by their shareholders who were also directors; thus, they barely convene their meetings physically or properly. However, in many IPO cases, the converting company gains some new shareholders before the IPO. The board of directors should formally convene the conversion meetings and all subsequent shareholders' meetings and send an

advance notice calling for the meeting together with a proxy form to the new non-management shareholders, giving them the chance to participate and cast their votes.

All directors, including the chairman of the board and key executives, should attend the meeting and answer all shareholders' questions. Regardless of their shareholding percentage, each shareholder should be allowed to speak, ask questions, and cast a vote (by means of a ballot). This will demonstrate the company's readiness to become a public company, as well as establish a good relationship with new shareholders.

**5. Leadership and Vision.** The board of directors should have a leadership, vision and decision-making power independent from the influence of other related parties. Therefore, there should be a system to distinguish between the duties and responsibilities of the board and the management, and between the board and shareholders.

**IPO issuer:** All IPO issuers derive from family-owned or privately held businesses wherein the shareholders and directors are mixed and frequently the same. When going public, what should be undertaken along with the normal reorganisation of the board, besides adding audit committees, is to separate the board from the

management team as much as possible by inviting outside professional directors or managers to join. At least, the chairman of the board and the CEO should be different persons.

**6. Conflict of Interest.** The board, the management and shareholders should manage conflicts of interest among them carefully, honestly, reasonably and independently for the best interests of the company.

**IPO issuer:** Prior to the IPO, all directors' loans and self-dealing transactions should be either removed or fully disclosed. By virtue of SEC regulations, the Articles of Association of a private company must be amended when converting into a public company and shall incorporate a provision regarding "connected transactions" between the company and its directors or shareholders.

**7. Business Ethics.** The board of directors should prepare a code of ethics or statement of business conduct for all directors and employees of the company and also monitor compliance with such code or statement.

**IPO issuer:** All directors of a company going public must attend a short mandatory training programme specially designed for corporate directors of listed public companies. In addition, each director should be provided with a pocket book of Code of Best Practice for Directors of Listed Companies published by the SET in 1999. The Audit Committee should follow the special rules of the SET and

abide by the Best Practice Guidelines for Audit Committee.

**8. Balance of Power for Non-executive Directors.** One-third of the directors should be independent non-executive directors, at least three, who should have the same qualifications as the audit committee set forth by the Notification of the Stock Exchange of Thailand Re: Qualifications and Scope of Work of the Audit Committee (No. 1) 1999. If the company has a group of shareholders with dominant power, there should be a certain number of directors to represent such a group.

**IPO issuer:** The board should allocate time during the IPO preparation to select the minimum three members of the audit committee from qualified persons and ensure that each of them is truly independent and absolutely has no involvement or relationship with the company, directors, and major shareholders. According to the Public Limited Company Act, the appointment of directors must be approved in a shareholders' meeting applying cumulative voting that empowers minority shareholders to nominate a director representing their group.

*(To be continued in Part 3 on May 20. The previous article in the series is available online at [www.tillekeandgibbins.com](http://www.tillekeandgibbins.com))*

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