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EFFORTS TO IMPROVE TRANSPARENCY OF CORPORATE INFORMATION: Comparison between Thailand and Malaysia

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＜Abstract＞

In this article, it is discussed in a comparison manner how transparency of corporate information has been improved in Thailand and Malaysia in which the capital markets are relatively advanced among the East Asian countries.

As the common features, the following points are mentioned: (1) the single securities authority is responsible for securities supervision in each of the countries, (2) the domestic accounting standards have been established along with the International Accounting Standards, and (3) in the process of the authorities' approval of securities issues, the shifts from a method based upon subjective judgment to an objective method based upon disclosed information have been carried out. On the other hand, the following differences are raised: (a) the domestic accounting standards are based upon the legal endorsement in Malaysia whereas they are not in Thailand, and in terms of (b) the legal execution power of the securities authorities and punishments, (c) awareness of reliability and independence of accounting audit and (d) the system of strengthening governance in securities issuing companies, Malaysia is stronger than Thailand, while many significant improvements have been observed in Thailand.

Having observed this comparison, this article also discusses tasks to be conducted in the future in both countries.

Key words: Transparency, Disclosure, Legal framework, Accounting audit, Corporate governance

Ⅰ. Introduction

Development of the bond markets in East Asia requires fundamental factors such as increased number of bond issuing companies which attract investors and broader investor bases. In addition, the legal frameworks should be strengthened which require the companies to disclose financial reports accurately in accordance with the accounting standards so that investors' rights are well protected to obtain correct and sufficient information of bond issuing companies necessary for investment decision.

Furthermore, in order to secure and strengthen the function of the above-mentioned legal framework, another legal framework should be arranged in which it is clearly stated that providing false corporate information is illegal and subject to punishment and investors or securities authorities have the power to create litigation against bond issuing companies and their executive managers who have failed to do so.

This article describes in a comparative way:

(a) how legal frameworks and measures have been strengthened in the efforts to improve transparency of corporate information in the two countries, that is, Thailand and Malaysia whose bond markets are rapidly strengthened, and

(b) what are problems and challenges lying ahead in the future,

based upon the readings of the laws and regulations of the two countries and the information obtained through the interviews in the two countries [A].

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Ⅱ. Importance of Transparency

Before moving to the comparison of the efforts to improve transparency between Thailand and Malaysia, we would like to briefly discuss how important improving transparency of corporate information is for a country.

If corporate information is not accurately and appropriately provided and things are not transparent about a company, some undesirable things will possibly happen.

First, a company will try to hide a loss in a secret place such as a " paper company "subsidiary. In many cases, companies doing so have shown that they could not stop losses from increasing and eventually came to collapse (as seen also in the U.S. companies and the Japanese companies in recent years).

Second, a company will try to hide a bad use (or leakage) of the company's money, for instance, to a highly risky investment or an inappropriate payment to related parties including a related "family."

Third, without an appropriate checking and monitoring function, a company will borrow in a dangerous way, relying too much on short-term and foreign currency borrowing for trying to take advantage of low interest rate, as seen until the 1997 crisis typically in Thailand and South Korea.

Therefore, strengthening transparency of corporate information is critically important in (1) that transparency will bring about discipline and good corporate governance and discourage the company management to recklessly do wrong things because of the feeling of being watched and checked by other people and thus will strengthen the corporate sector, and (2) that foreign investors, looking at the corporate sector which has thus strengthened transparency, will be encouraged to come to the country in the form of direct investment forming joint ventures with the local corporations or securities investments in the local capital market. Many countries seem to be now aware that the more opaque a country is the higher cost the country (or a company in the country) needs to pay for borrowing external funds[1] and have started improving transparency in a competitive way.

Ⅲ. Comparison between Thailand and Malaysia

There are different political and social backgrounds behind the efforts to improve transparency of corporate information from country to country and difference in speed with which improvements are moving forward in the same direction. In this sense, the meaning of comparing the two countries' such efforts may not be significant. However, it would be convenient to compare the two countries for highlighting characteristics of each country's efforts and to identify some issues behind such efforts. As such, a comparison method is adopted in this article.

1. Comparison Table

The table below summarizes a comparison between Thailand and Malaysia in various aspects of improvement of transparency.

[A] The writer conducted the interview survey in Bangkok, Thailand in December 2001 and in Kuala Lumpur, Malaysia in January 2002 when the writer belonged to a research institution named the Institute for International Monetary Affairs, Tokyo, Japan.

The specific names of the institutions with which the writer had interviews in Bangkok and Kuala Lumpur are not shown as sources of the specific information or explanations in this article since the writer did not obtain their consents to the appearances of their names, but such institutions include the securities supervisory authorities, accounting standard authorities, accounting firms, law firms, and financial institutions.

Legal frameworks related to transparency of corporate information
-- Comparison between Thailand and Malaysia --
< Summary >

		Thailand	Malaysia
Framework			
	Laws and regulations related to disclosure of corporate information	Public Company Act of 1992 Accounting Act B.E.2543 (2000) Securities and Exchange Act (1992) ("SEC Act") [2] Listing rules of Stock Exchange of Thailand ("SET")	Companies Act 1965 Financial Reporting Act 1997 Securities Commission Act of 1993 ("SC Act") Listing Requirements of Kuala Lumpur Stock Exchange ("KLSE") Malaysian Corporate Governance Code
	Supervisory authorities	Securities and Exchange Commission ("SEC"), SET (supervising securities issuing companies / listed companies), Registrar of Companies in the Ministry of Commerce (supervising public limited companies)	Securities Commission ("SC"), KLSE (supervising securities issuing companies and listed companies), Registrar of Companies in the Ministry of Domestic Trade & Consumer Affairs (supervising non-listed companies)
Disclosure			
	Information To be disclosed	■ Financial statements (balance sheet, profit and loss statement, statement of retained earnings, statement of cash flow, change of net worth, supplementary explanation, etc.), Transactions with related parties, segment information within a company, consolidated financial statement	■ Financial statements (balance sheet, profit and loss statement, change in net worth, cash flow statement, accounting policy), consolidated financial statements, transactions with related companies within the group, transactions with related parties, company's internal information, etc.
	Timing of disclosure	■Within five months from the date of the financial statement (Accounting Act)	■Within six months from the date of the financial statement (Company Act, Listing Requirement)
	Bond issues	Registration documents and prospectus	Application and prospectus
	Establish-ment of accounting standards	■The accounting standards set out by the Institute for Certified Accountants and Auditors of Thailand are deemed to be the accounting standards based on the said Act although legal endorsement is absent. ■ There is a movement toward establishing a standard setting body (Thai Financial Accounting Standard Board) but it has not realized yet.	■The accounting standards which were issued by Malaysian Accounting Standards Board ("MASB"), a body recognized by the law, were adopted as the legally binding standards. Such accounting standards are called "approved accounting standards" in the law named Financial Reporting Act 1997.
	Domestic accounting standards	■ Based upon the International Accounting Standards (IAS) in general. There are differences in some areas including impairment of fixed assets.	■Based upon the IAS in general. There are differences in some areas including consolidation of special purpose companies, appraisal of fair value of assets and liabilities.

	Accounting Audit by CPA	Required (provided that a partnership is not required, subject to certain condition) (Accounting Act)	Required (Companies Act)
	Criteria of approval of securities issuance	Shift from Merit-based system based on subjective judgment to Disclosure-based system based upon objective appraisal	Shift from Merit system based upon subjective judgment to Full Disclosure System based on objective appraisal
Execution			
	Penalty	Both imprisonment of five years or less and fine of less than double of the amount of the presented securities but not less than 500,000 baht (about 1,500,000 yen).	Imprisonment for term not exceeding 10 years and/or fine not exceeding RM three million (about 108 million yen).
	Legal action of the securities authorities	▪The SEC has the power to investigate and examine. The SEC is authorized to lodge a complaint with the relevant authority such as the police, but is not authorized to make litigation as plaintiff. ▪The SET is a front-line regulator.	▪ The SC has the power to initiate investigations, commence criminal prosecutions with the consent of the Public Prosecutor, institute civil proceedings to recover monetary damages from offenders, etc. ▪The KLSE is a front-line regulator.
	Class action lawsuit	Under process of legislation to start it (but seems not to be smoothly moving)	Being studied by the SC and other related parties
Governance			
	Independent directors and audit sub-committee	▪ Necessary to place two or more independent outside directors ▪An audit sub-committee must compose of at least three independent directors each of whom does not directly or indirectly hold more than 0.5% of the paid-up capital of the company. ▪There is no regulation which requires that nomination sub-committee or remuneration sub-committee be established.	▪(i) Two directors or more or (ii)one third of the members of the directors meeting, whichever is larger, should be independent directors having 5% shareholding or less. ▪ Audit sub-committee, director nomination sub-committee and director remuneration sub-committee must be established.

2. Outline of Main Laws

Next, we briefly look at main laws and regulations which govern disclosure of corporate information in the two countries.

Thailand: Public Company Act of 1992

There are four types of companies in Thailand: private limited company, public limited company, partnership and joint venture. Almost all of bond issuing companies are public limited companies. The law which governs public limited companies is Public Company Act of 1992 and Registrar of Companies in the Ministry of Commerce is responsible for the jurisdiction.

Thailand: Accounting Act (2000)

Main provisions related to disclosure of corporate information are as follows:

Who are required to prepare reports	All companies (that is, limited companies, limited public companies, foreign companies doing business in Thailand, partnerships and joint ventures)
What to disclose	Financial statement (i.e., balance sheet, income statement, retained earning statement, cash flow statement, statement of changes in the shareholders' equity, other supplementary statement/notes, etc.)
Accounting standard	The accounting standard established by Institute for Certified Accountants and Auditors of Thailand (ICAAT) is deemed to be the accounting standard based on the Act although legal endorsement is absent.
Accounting audit	Accounting audits by certified public accountants are required (provided that partnership is not required).
Preparation of documents	Once every twelve months, within five months after the date of the financial statements
Whom to disclose	Department of Commercial Registration, Ministry of Commerce

Thailand: Securities and Exchange Act (1992) (or SEC Act)

Securities transactions including bond transactions are regulated by this law. Main provisions of the SEC Act related to disclosure of information are as follows:

- The SEC is to be established as the single authoritative body for the securities issues.
- The Office of the SEC ("Office") is to be installed as juristic person which has the authority and obligation to execute the provisions of the SEC Act. The Office was established in May 1992 upon the enactment of the same Act.
- Companies which intend to issue securities must register the registration documents and prospectus with the Office.
- Securities issuing companies must submit to the Office quarterly reports duly checked by auditors which have been approved by the Office and financial statements, annual reports, etc. which have been checked and given opinion by such auditors. According to the Rule of the SET, financial statements are to be prepared in accordance with the rules mentioned by the SEC and auditors for companies which request for listing on the SET must be those approved by the Office.

Malaysia: Companies Act 1965

The law which regulates non-listed companies is Companies Act 1965 that is under jurisdiction of Registrar of Companies ("ROC") in the Ministry of Domestic Trade & Consumer Affairs. It provides that companies are required to undergo accounting audit on the financial statements once a year, that audited financial reports of limited companies are required to be approved by the shareholders meeting within six months after the date of the financial statements and then be submitted to the ROC, and that annual return must be registered with the ROC.

Malaysia: Securities Commission Act of 1993

This Act is the law which regulates securities transactions including issuances and tradings of bonds. The main regulations are as follows:

- A body corporate by the name of "Securities Commission" is to be established. The SC was set up in March 1993.
- An issuing company is required to submit an application and prospectus to the SC and to have the prospectus registered. It must not provide false information on the prospectus or omit material information.
- Regarding the information on the document which the issuing company submits to the SC, the company, its directors, its financial advisors and experts including accountants and asset appraisers must not provide false or misleading information or omit material information.
- In a case where its directors, financial advisors and/or experts have noticed false information or omission of material information after the information is provided but before a securities transaction takes place, they must notify the SC to that effect.

With regard to the supervision of securities business in Malaysia, previously, the SC and Bank Negara Malaysia which is the central bank were responsible, but in July 2000, the supervisory authorities were integrated into the SC and the SC was given legal enforcement power, accordingly.

Malaysia: Listing Requirements of the KLSE

The companies listed on the KLSE is required to comply with the following listing requirements:

- to submit half-year reports (as of ends of June and December) to the KLSE within two months after the end of the relative accounting period.
- to prepare and submit quarterly reports on consolidation basis to the KLSE within two months.
- to submit annual reports to the shareholders and the KLSE within a period not exceeding six months from the close of the financial year, and to submit annual audited accounts prepared on consolidated basis to the KLSE within four months.

Malaysia: Approved Accounting Standards

The approved accounting standards are the legally endorsed domestic accounting standards. According to the accounting authorities, they are legally binding upon as many as eight hundred public limited companies and 500,000 private limited companies. However, partnerships, government bodies (including state-run companies, but not including public limited companies) are not required to utilize the approved accounting standards.

The approved accounting standards require that balance sheets, income statements, all changes in equity, cash flow statements, and accounting policies and explanatory notes on consolidated basis be presented as the components of financial statements. They also require that transactions with related companies within the group and those with related parties and segment information within the company be disclosed.

3. Differences and Common Features

The differences between the two countries are summarized as follows:

(1) The systems of the relevant laws and regulations and the legal positions of the accounting standards and accounting-standard-setting organizations are different.
(2) The legal enforcement powers of the authorities and strengths of penalty are different.
(3) Degrees of awareness of the reliability of accounting audits are different.
(4) The strengths of the governance systems within securities issuing companies are different.

On the other hand, the following points are commonly observed in the two countries:

(1) Both countries have one single entity of the securities supervisory authorities.
(2) Both have arranged domestic accounting standards prepared along with and consistent with the International Accounting Standards.

(3) Both have shifted from merit system to disclosure-based system for approving issuance of securities.

(4) Neither of the two countries has established a legal system of class action lawsuit yet as a means of protecting investors' rights (especially individual investors' rights).

Now we look at these points in detail below.

Difference 1 : The system of laws and regulations and the legal endorsement of the accounting standards

(Presence of legal endorsement in Malaysia and absence in Thailand)

The laws which govern disclosure of corporate information in Thailand are Public Company Act of 1992, Accounting Act (2000) and the SEC Act. The Listing Requirements of the SET and the accounting standards also play the governing role in this regard.

On the other hand, the relevant laws and regulations in Malaysia include Company Act 1965, the SC Act 1993, the approved accounting standards, Listing Requirements of the KLSE and the Malaysian Code on Corporate Governance ("CG Code").

The main points of the above-mentioned difference are as follows:

First, in Malaysia, while principles of corporate governance and the CG Code (set up in March 2000) were originally set out as voluntary rules, the revamped Listing Requirement of the KLSE was established in January 2001 and required that the directors meeting of a listed company put a statement[3] of compliance with the CG Code on the annual report and thus made the CG Code legally binding.

In Thailand, there is no regulation which stipulates that a rule on corporate governance is legally binding.

Second, when Malaysian companies prepare financial reports they must comply with the approved accounting standards issued by the Malaysian Accounting Standards Board (or MASB), the legally responsible organization for formulating the nation's accounting standards. The approved accounting standards are the legally binding accounting standards approved by Financial Reporting Act 1997. Public limited companies and private limited companies are legally bound by the approved accounting standards while partnerships, sole proprietary, government bodies (including state owned companies but not including state-run public limited companies) are not bound although they are encouraged to comply with the approved accounting standards, according to the accounting authority.

On the other hand, in Thailand, Institute of Certified Accountants and Auditors of Thailand ("ICAAT") sets out the accounting standards, but such standards do not have legal binding force and the establishment of ICAAT is not legally recognized. Meanwhile, there is a plan going on to establish Thailand Financial Accounting Standard Board (TFASB), an independent standard setting organization (World Bank (2001) *Thailand Country Development Partnership for Competitiveness*) but the plan seems not to have been implemented yet when the writer checked the updated information in September 2003.

Difference 2 : Enforcement Power of the Authorities and Penalties

(Severer in Malaysia)

First, the rules in Malaysia are severer than in Thailand in respect of term of imprisonment and amount of fine. According to the Accounting Act of Thailand, there are several penalty provisions of both fines amounting to 10,000 baht, 30,000 baht, or 50,000 baht and imprisonments of six months or one year, depending on significance of the cases of failure to carry out accounting reports in accordance with the rules. And under the SEC Act of Thailand, (i) one who has prepared false accounting reports, or concealed material information which should be disclosed on the registration documents and prospectus shall be liable for both an imprisonment of five years or less and a fine of double of the face value of the securities or lower but no less than 500,000

baht (approximately ¥1,400,000 or US$12,000), and (ii) the directors or the managers who conduct false accounting treatments or omitted material information on the accounting reports shall be liable for both imprisonment for a term of five to ten years and a fine of 500,000-1,000,000 baht.

On the other hand, in Malaysia, the following regulations prevail: Any person who has contravened a requirement of any provisions of the SC Act by providing false information or concealing material information in respect of a securities transaction and has been declared guilty shall be punished with a fine not exceeding RM3 million (approximately ¥95,000,000 or US$790,000) or imprisonment for a term not exceeding ten years, or both. The name of such person shall be disclosed to the public. If a person does not comply with the regulations or the Listing Requirements of the KLSE, the KLSE may, upon consultation with the SC, direct the person to comply with them, or take actions of imposing a penalty not exceeding 1,000,000 ringgit, reprimanding the person, suspending the trading of the listed securities issued by the person, or de-listing the person from the Official List.

The second aspect of strictness is that Thailand's SEC Act prohibits an issuing company and its directors to provide false information and omit material information, whereas the SC Act of Malaysia places not only an issuing company and its directors but also outside parties concerned including financial advisors and accountants subject to prohibition and penalty.

In Thailand, by the way, accounting auditors whose quality is bad or who do not comply with the regulations of information disclosure will be subject to punishment not necessarily in the form of legal punishment but in the form of delisting from the list of the SEC-approved auditors, disclosure of the names, and/or revocation of the Certified Public Accountant licenses by the Ministry of Commerce.

Thirdly, Malaysia's SC has stronger legal execution power than Thailand's SEC. In Thailand, investors have the right to claim compensation for losses, but the number of cases actually brought to the legal courts has been very small. Those who try to make lawsuits are discouraged to do so since it is costly and troublesome to prove the other parties' illegal act and the judicial courts' procedures and processes are too long. Rather, investors in Thailand expect the SEC to institute litigation (or "to dig a case" according to the authorities) in place of themselves. The SEC, however, does not have power to file litigations directly with the legal courts as plaintiff. What the SEC can do is to bring criminal cases to amicable settlements out of court, or to lodge complaints[4] of criminal cases to the Police, or to investigate and examine securities firms on site and seize the documents concerned.

In Malaysia, on the other hand, the SC has the power to institute civil proceedings on behalf of a person (e.g., an investor) who has suffered loss or damage by reason of the conduct of another person who has contravened the SC Act. The SC has the power to conduct a prosecution in court for securities offences with the consent in writing of the Public Prosecutor. The SC may initiate out-of-court settlement upon obtaining consent of the Public Prosecutors. And in respect of offences which do not fall within the purview of the SC, the SC may lodge a complaint with the relevant authority such as the Police, the Anti-Corruption Agency or the Registrar of Companies for their further investigation.

In Malaysia, an investor can institute civil proceedings against the issuing company, its directors, or parties concerned including securities underwriters and advisors who have contravened the law in order to recover loss or damage resulting from the contravention. But, according to participants in the local capital market, it is very difficult in reality for an investor to prove the other parties' illegal acts, and therefore, there have been very few litigation cases which the investors initiated.

Difference 3. Awareness of Reliability and Independence of Accounting Audit

(Stronger in Malaysia)

Reliability and independence of accounting

audit may be challenged by a question: Will an accounting auditor's business relationship with a client firm influence on its mission to write a true and fair auditing opinion?

This issue was highlighted significantly by the world's famous unsound relationship between Enron Corp. and Arthur Andersen. Enron was the U.S. energy giant which made the deceptive financial reporting and collapsed in the form of filing for the U.S. Chapter 11 bankruptcy proceedings in December 2001. Arthur Andersen, once one of the prestigious Big Five accounting firms, was Enron's accounting auditor and earned large amount of the consulting service revenue from its client as well as the auditing revenue. It was found that this relationship in the consulting business disturbed a sound check-and-balance function of Arthur Andersen as auditor and as a result Arthur Andersen failed to stop Enron from conducting unsound financial operations in which huge amount of losses and debts were concealed by shifting to thousands of "paper company" subsidiaries.

When the writer visited Thailand for a hearing survey in mid-December of 2001, immediately after Enron's bankruptcy on December 2, 2001, it seemed that accounting people in Thailand were not so much aware of or were not intensively talking about the issue of independent accounting auditor at that time. What the writer heard from officers at foreign financial institutions in Bangkok was that investors rely more on the SEC of Thailand than accounting auditors.

On the other hand, when the writer visited Malaysia in mid-January 2002, one month later, officers at the Malaysian authorities said that while there was not major problem about independence of accounting audit, mentioning seventy percent of accounting firms' revenues coming from consulting business, they were well aware that accounting auditors should fulfill their duties so that they were free from influence from other interest which would likely lead to suspicion about the fairness and independence of the audit certificate.

In addition, in the Capital Market Masterplan of Malaysia, the proposal of February 2001 which reflected their awareness of this issue, it is stated that a Working Group consisting of the SC, the MASB[5], the central bank, the ROC, the KLSE, etc. would be established in the future and would review accountants' role and responsibility and that a policy measure would be carried out to strengthen external auditors' quality and independence. When the writer sought updated information of this contemplated Working Group in September 2003, however, no information of any progress was obtained. According to the Masterplan, it should be considered that an accounting auditor should be rotated at a certain period of time and that accountants should be examined by other accountants (called "peer review program"). And the securities authorities said that they would be discussing the issue that directors sent to a company by an accounting firm should be substituted by a director sent from other accounting firm on a rotation basis.

Malaysia seems to be more aware of this issue of reliability and independence even when the writer takes into consideration that mid-December 2001, the time of the interviews with the people in Bangkok, was too early for them to raise their attention to this issue after Enron's collapse.

Meanwhile, it should be noted that other efforts[6] are made in Thailand to maintain quality of accounting audits. Guidance has been provided from the SEC so that one accountant does not cover too many clients in case of listed companies. Previously, the Board of Auditing Practice, one of the bodies which supervise accounting auditors, set out a rule (1997), with a view to improving the quality of auditors, that an auditor which handles more than three hundred financial statements is regarded as carrying out job over his/her capacity and his/her license should be revoked, and that the name of the accounting firm he/she belongs to should be disclosed.

Difference 4. Institutional Framework to Strengthen Corporate Governance in Bond-issuing Companies

(Stronger in Malaysia)

Independent Outside Directors

Companies are required to appoint independent

directors both in Thailand and Malaysia, but the contents of the requirements are slightly different.

In Thailand, listed companies are required to appoint at least two outside directors who are independent from the major shareholders and the management. "Independent directors" are neither employees who receive regular salaries from the company applying for the listing or its related companies, nor advisors, and do not hold more than 0.5% shares in the company[7].

In Malaysia, on the other hand, a listed company is required to ensure that at least two directors or one third of the board of directors of the company, whichever is the higher, are independent directors. Principal definitions of "independent directors" include directors who have not been officers of the bond-issuing company for the last two years, or directors who are not major shareholders having 5% or more shares in the company.

Audit Sub-Committee, Nomination Sub-Committee, and Remuneration Sub-Committee

Many countries have been moving toward adopting the American-style corporate governance system in which three sub-committees are set up under the board of directors: audit sub-committee, nomination sub-committee and remuneration sub-committee.

In Thailand, listed companies are required to establish an audit sub-committee but are not required to set up the other two sub-committees. After the 1997 crisis, the SET requested in January 1998 that an audit sub-committee be installed by the end of 1999 to improve and strengthen listed companies' internal control with a view to improving corporate governance and seeking three values of transparency, integrity and accountability. The SET regulated in the Guideline of June 1999 that an audit sub-committee must consist of at least three independent members and at least one member must have knowledge and experience in accounting and financial management. And furthermore, the SET required again in the Regulation of the SET of February 2001 that an audit sub-committee be established. According to the World Bank's report, "Thailand Economic Monitor" of July 2001, more than 90% of the listed companies set up audit sub-committee. In this sense, a progress has been observed.

And in Malaysia, listed companies must establish the three sub-committees. The Malaysian Code on Corporate Governance which has legally binding force on listed companies stipulates strengthening information disclosure, establishing three sub-committees and so on. A listed company must install an audit sub-committee which consists of at least three directors and majority of " independent directors" and is chaired by an independent non-executive director. At least one sub-committee member is required to have practical experience of accountant. Nomination of directors must be conducted by a sub-committee which consists of all non-executive directors. Regarding remuneration of directors, a sub-committee which all or principally consists of non-executive directors must be established. An executive or non-executive director must not be involved in a discussion to determine his/her own remuneration.

Common Feature 1 : Integration of Securities Authorities

Both in Thailand and Malaysia, securities supervisory authorities are concentrated in one organization namely the SEC and the SC, respectively. Both the SEC and the SC are playing the central role of improving transparency of information on bond-issuing companies and of being the leader in strengthening corporate governance.

Both the SET of Thailand and the KLSE of Malaysia closely monitor the market, conduct actions on real-time basis in prompt and flexible manners, and play the roles of "front-line regulator" which supplement the SEC and the SC respectively. The SET is given power to make a listed company explain, if necessary, in case there is rumor or suspicion of false or misleading information. The KLSE is provided with authority to investigate on false or misleading information or other misconducts.

Common Feature 2 : Domestic Accounting Standards Established Along the Line with the International Accounting Standard

Both Thailand and Malaysia have issued the domestic accounting standards which were based on the International Accounting Standard ("IAS"). The IAS was born as the world's common accounting standard in the process of globalization. International Organization of Securities Commissions, widely known as IOSCO, recommended that a securities supervising entity of each country use the IAS as the accounting standard of financial statements which is used when a foreign company raise funds in that country's capital market and thus the IAS is being recognized as the global standard all over the world.

The Institute for Certified Accountants and Auditors of Thailand, the organization which issues Thai Accounting Standard ("TAS"), set up as many as thirty new accounting standards over the three years from 1998 to 2000 including TAS 35 (Presentation of Financial Statements), TAS 47 (Related Party Disclosure), TAS 48 (Financial Instruments: Disclosure and Presentation). These TAS standards were issued basically along the line with the IAS standards and there were no major difference between the TAS and the IAS[8], according to the accounting authorities. During the hearing survey of December 2001 in Thailand, the writer asked the accounting authorities which matters had significant difference between the TAS and the IAS. They replied that the issue of impairment of fixed asset had relatively large gap between the two and needed to be narrowed. "Impairment of fixed assets" is an accounting treatment in which the book value of a fixed asset, that produces much lower profits than before and is unlikely to fully recover the investment amount, is reduced in order to reflect the current probability of recovery.

In Malaysia, taking the public opinion into consideration, the Malaysian Accounting Standards Board ("MASB" again) established various accounting standards ("MAS") one after the other including MASB-1 (Presentation of Financial Statements), MASB-8 (Related Party Disclosure), MASB-11 (Consolidated Financial Statements and Investments in Subsidiaries). During the hearing survey of January 2002, the writer heard that there was little gaps between the MAS and the IAS, but that the following areas had slight gap and were under review and consideration toward narrowing them: intangible assets, treatment of government grants, translation of financial statements of hyperinflationary subsidiaries, consolidation of special purpose entities (under investigation since many problems were likely if adopted), and fair values of financial assets and liabilities (under investigation since many problems were likely if adopted). When the writer sought updated information of narrower gaps in October 2003, the MASB kindly advised that it issued a new accounting standard (MASB 31) for government grants to be effective from January 1, 2004, and that there would be no gap any more in this matter.

Common Feature 3 : Shift from Merit-based System to Disclosure-based System

Both in Thailand and Malaysia, they shifted from "merit-based system," in which securities authorities provided approvals based on their own subjective judgments, to "disclosure-based system," in which approvals were provided on the basis of disclosed objective corporate information.

In Thailand, they shifted to the disclosure-based system in October 2001, according to the securities authorities.

In Malaysia, when the approval-giving entities were integrated to the SC in July 2000, they shifted to the full-disclosure based framework for approval of new issues of bonds (while they did not shift for the approval of new issues of stocks). According to the securities authorities, the reasons for the shift were as follows: (i) in the conventional system, the review and appraisal process at the authorities took time and timely bond issuances were disturbed; (ii) it was necessary to improve transparency in the bond market. In the new framework, what the authorities appraise are not merit derived from investments in particular names of the securities, issue price or issue volume. Instead, the authorities concentrates on establishing clear issuing rules for

market intermediaries and issuers and, as a result, clear and objective issuing criteria are expected to be shown. In the new framework, the bond issuing process was shortened to approximately fourteen days in July 2000.

Common Feature 4 : Absence of Class Action Lawsuit

A legal system of class action lawsuit, by a group of investors in particular, has not been introduced yet in Thailand and not yet in Malaysia, either. "Class action" is an action brought by or against one or more persons as representative(s) of a larger group. All the persons represented must have the same interest in the proceedings, and therefore a representative action cannot generally be brought if each member of the group has a separate claim for damages. Judgment in a representative action is binding upon all the persons represented [9].

In Thailand, investors are not encouraged to initiate litigation as previously discussed. Therefore, the authorities have been aware that court procedures need to be streamlined smoothly so that legal execution can be conducted more efficiently at lower costs. It was said in December 2001 that a proposal to revise the law in order to introduce class action lawsuits were submitted to the Office of the Council of State by the SEC, but according to a writer's follow-up updating in September 2003, the legislative procedures have not yet come to a point that a class action lawsuit has been established as a legal institution.

In Malaysia, there is no legal framework for this legal procedure, either, while a working group with the SC playing the central role was studying this issue. One of the securities authorities' officers said that this issue would be one of the tasks to be taken up in the future.

Ⅲ. Evaluation by the Market Participants

In the hearing survey, the writer asked bond dealers what they thought about the legal system relating to transparency. They replied that transparency of corporate information was improving in general in both countries in terms of the legal framework, the accounting standards, and awareness of the authorities and market participants.

In Thailand, market participants and an international organization said that as far as bond issuing companies or listed companies are concerned, transparency improved because of the following reasons: especially after the 1997 crisis, the accounting standards were organized in conformity with the international standards; the new laws clearly stipulated disclosure methods; and the obligation to appropriately disclose information became stronger and severer; the Thai people now became more aware of the eyes of the foreign partners and the foreign capital markets; the supervisory authorities became stronger; the penalties became severer; and the quality of the accountants improved.

In Malaysia, market participants said that there were no more major problems about bond issuing companies since they were checked by the authorities thoroughly and severely. Accounting auditors did not contravene the rules and the laws any more and a punishment on accounting auditors were not heard of, either, since they would receive severe punishment pursuant to the SC Act and would lose their jobs, according to the market participants who seemed satisfied with the current system. The authorities' officers also said that they did not hear complaint about quality of accounting audits.

Ⅳ. Tasks in the Future

Having looked at the two countries, next, we discuss the tasks to be conducted in the future for improving transparency in Thailand and Malaysia respectively.

1. Thailand

1) To establish accounting standards with legal ground

In Thailand, neither the accounting standards nor the accounting standard setting body has legal ground. It is better to have legal ground since it would clearly state that an accounting treatment which has not been conducted in accordance with

the standards is in contravention of the law and can force one to remedy the treatment. As a matter of fact, a legislative process is under way to establish a standard setting entity with legal ground[10]. We would expect a good development in this matter in the future.

2) To ensure independence and reliability of accounting auditors

This issue of independence and reliability would be a new area for Thailand to deal with, when even in the U.S.A. which had long been believed to have the strongest accounting system and auditing system, unsound relationship between a company and its accounting auditor became the hottest highlighted issue with the world-wide surging attention as previously explained. As a result of the lessons learned from the weak accounting audits at Enron Corp. and WorldCom Inc. which collapsed and eventually "melted down", the new law of corporate reform named Sarbanes-Oxley Act[11] was enacted in America in July 2002. The main points of this Act include, among others, (i) to institute a new independent entity under the SEC of the U.S. to supervise accounting auditors and (ii) to make accounting auditors divide between auditing business and consulting service business to avoid inappropriate cozy relationships with clients.

In Thailand, people seem to be relying more on the SEC rather than accounting auditors, but any effective measures should be taken toward creating a system to ensure the reliability with which accounting auditors point out unsound accounting treatments from independent viewpoint from the relationship with their clients and give strict and impartial audit opinions.

3) To strengthen penalty rules

We cannot deny a feeling that Thailand's penalties including smaller fines are mild when compared with Malaysia. It would be necessary to put forth rules and regulations which prohibit an issuing company, its managers and directors, its accountants and lawyers from being involved in providing false or misleading information or concealing material information and require them to notify when they became aware of misconducts, and penalty provisions on the contraventions.

4) To narrow the gap between the TAS and the IAS

It would be necessary to make effort to revise the TAS more and further narrow the gap in order to induce more foreign investors to Thailand.

5) To improve political transparency

Thailand's effort to improve transparency of corporate information has been put into practice and has brought several good results including good legal framework. However, it is necessary to improve transparency of social and political aspects which underlie and supports such efforts.

In February 2002, it was reported that California Public Employees' Retirement System (well known as "CalPERS"), one of the largest U. S. institutional investors, decided to take four east Asian countries including Thailand and Malaysia out of their investment portfolio in view of political instability, level of labor quality, freedom of expression and transparency including good accounting practice (Asian Wall Street Journal, February 22-24, 2002). From the standpoint of this paper which has discussed that the transparency of corporate information in Thailand has been improving, we cannot fully understand the thought behind the decision of CalPERS.

But a recently observed example of opaque behavior of a Thai politician makes one think that Thailand's social and political culture has not improved in substance since the 1997 crisis, one of the key factors of which turned out to be the weak corporate governance reflecting a cozy relationships between the politics, the finance sector and the business sector. As an example of Thai politician's opaque behavior, we can raise a case: on the occasion of the initial public offering for the privatization of Petroleum Authority of Thailand in November 2001, two million shares and 1.5 million shares were allotted to the relatives of the Industry Minister, much more than the general investors,

according to a report of early February 2002. The shares were so popular that they were sold out within 85 seconds. However, only 100,000 shares per person were allotted to the general investors and more than 5,900 people were on the waiting list. The SEC announced that there was no unfair practice in the sale and allotment, but we cannot wipe out a feeling of lack of transparency about the suspicion that favorable treatment may have been given to the relatives of the politician. We cannot eliminate a comment that this kind of events may have influenced on the decision of CalPERS[12].

2. Malaysia

1) To further narrow the gap between the Malaysian Accounting Standard and the International Accounting Standard

The MAS standards have solid contents and legal force, but there are some differences from the IAS standards as mentioned before. In the area of consolidated financial statements of special purpose companies in particular, they need to seek sound accounting treatments since derivative transactions are anticipated to become more active in Malaysia.

2) To establish a class-action lawsuit system

Establishment of this system is desired to make recovery of investors' rights more possible and realizable.

3) To ensure independence of accounting auditors

The Malaysian authorities are well aware of the importance of the independence issue and seem to consider taking necessary measures. We would keep eyes on what measures they will come up with.

In Malaysia, with the good understanding and backup by powerful political leaders, they have made efforts to improve transparency of corporate information including improvements of the accounting standards and the audit standards and strengthening the disclosure methods. In this sense, the CalPERS's decision to stay away from this country is less understandable than Thailand. We would expect further development and progress in their efforts to improve transparency.

Notes:

1 On the basis of an idea that countries tend to have to pay a higher interest rate on the debt they issue, PricewaterhouseCoopers, one of the major U.S. accounting firms, published "Opacity Risk Premium": in 2001, for example, 629 basis points for Japan, 801 bps for Thailand and 967 bps for South Korea.

2 It may be possible to use an abbreviated name of "SE Act," but in this paper we use "SEC Act" which is widely used in many places including the website of the Thai governmental entities.

3 This is a statement by a directors meeting which describes how the company has complied with the principle in the Malaysian Code on Corporate Governance and to what extent the company has followed the best practices of corporate governance mentioned in the Code. Also, responsibility of the directors meeting on preparation of the audited annual report and on status of internal control is required to be stated by directors meeting of a listed company.

4 Instead of "complaint" to be filed by a person who suffers damage or loss from offense of the law, a word "denunciation" to be filed by other person than the said suffering person should be used. But as the word "complaint" is more familiar to the general public, this word is used in the SEC's website, according to the SEC of Thailand.

5 When the writer sought updated information of the establishment of the said Working Group in October 2003, it was found that the MASB might not be involved in the establishment plan, and a possibility was found that the Malaysian Institute of Accountants (or MIA), instead of the MASB, should be involved. The MIA could not be reached for confirmation.

[6] Related to the issue of independence of accounting audit, it is interesting to see that Thai people have sense of avoiding "conflict of interests" not necessarily in the field of accounting firms but trustee as representative of bondholders. According to bond dealers of a Thai major bank, a commercial bank which has business relationship with a bond issuing company is not allowed in Thailand to be trustee for the bond. This can be a good contrast with Japanese banks. For example, one of the major Japanese banks which played a role of trustee for the bonds of Maikaru, a large Japanese retail company which failed, was found to have taken collateral as the main bank (creditor) of the company (*Weekly Toyo Keizai*, February 23, 2002).

[7] Actual numbers related to Thai companies are shown as follows (as of June 2000; the SET) : there were 3,504 directors in 381 listed companies. Number of directors a company varied from four to 25, with average of 12. Of these directors, independent directors were 959 in total. A group of companies having two directors a company accounts for 60 %, a group of three to four directors 38 %, and a group of five or more 2 %.

[8] In comparison tables of the TAS standards vs. the IAS standards prepared by the accounting authorities, and a local office of an international accounting firm, many items were indicated "Comparable to the IAS", or "Differences or departures from the original: None."

[9] Cited from *A Concise Dictionary of Law*, edited by Elizabeth A Martin MA (Oxon), Oxford University Press, New York, 1983.

[10] A plan was in progress to establish Thailand Financial Accounting Standard Board (TFASB) as independent standard setting body (World Bank [2001],"Thailand Country Development Partnership for Competitiveness"). The institutional framework to revise Accounting Professional Act necessary for establishing TFASB was in progress. But when the writer checked updated information in September 2003, it was found that TFASB had not yet been established.

[11] The law was named after the proposers of the draft law. Its official name is "An Act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes."

[12] Kowit Sanandang, "Commentary. It's Clear Why We're No Longer Attractive." *Bangkok Post* , February 23, 2002

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企業情報の透明性向上への取り組み
－タイとマレーシアの比較－

須藤　秀夫

＜抄　録・要　旨＞

東アジアの中で比較的資本市場の整備が進んでいるタイとマレーシアにおいて、どのように企業情報の透明性向上に取り組んできたのかを探った。

両国の共通点としては、(1) 単独の証券当局が証券行政を担っていること、(2) 国内の会計基準を国際会計基準に沿って整備してきたこと、(3) 証券発行の当局承認に際して、主観的な判断に基づく手法から開示された情報に基づく客観的な手法に移行したことなどが挙げられる。一方、両国の違いとしては、(a) マレーシアでは会計基準に法的裏付けがあるのに対し、タイではそれがないこと、また、(b) 証券当局の法的執行力、罰則規定、(c) 会計監査の信頼性と独立性に対する問題意識、および、(d) 証券発行企業内部のガバナンス強化の仕組みの面において、マレーシアの方がタイのそれらより強いこと、が挙げられる。

こうした認識を踏まえつつ、両国の今後の課題をも論じた。

キーワード：透明性　情報開示　法的枠組み　会計監査　企業統治