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Market and Corporate Governance in the New Environment: The Challenge Facing Thai Companies

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Part I: Introduction

Part of the East Asian crisis has been attributed to bad corporate governance which includes reckless lending by commercial banks, risky investment by managers, expropriation of company's funds by directors, managers or large shareholders, sham business deals and poor audits. While it would be somewhat far-fetched to attribute this crisis to bad corporate governance per se, but weakness in governance certainly rendered the economy much more vulnerable to economic imbalances. The bubble in the real estate and the property sector would not have been as large if banks and finance and securities companies were more cautious about their lending. The Bank of Thailand and the Stock Exchange of Thailand would have been better able to implement timely corrective measures should financial accounting and auditing properly expose the dire financial straits most banks and companies were in. But it is moot to talk about what could have happened. What is more interesting is that all of sudden we are shouldering the cost of inherent weaknesses in our corporate governance.

Fire-sale of hire-purchase businesses taken over from the 56 closed finance companies fetched 25-30% of the face value due to unreliable accounting[1] Poor accounting also pose a major obstacle to the on-going debt restructuring process. Unreliable financial data has caused distrust among creditors and debtors. Untransparent management, weak internal corporate control and lack of effective monitoring also made foreign only investors hesitant about buying up a minority share in Thai businesses. Hence, recapitalization has been slow-coming.

Picking itself up from the corporate ruins, Thailand has put great efforts in building better corporate governance. A series of economic reform laws have been passed, including a new or improved bankruptcy law, forelosure law, money laundering law and anti-trust law. Several institutions have been set up such as the bankruptcy court, the small claims court and the Corporate Debt Restructuring

[1]The bid submitted by a (well-informed) Foreign consulting company which also performed an advisory role to the government valued the assets for sale at 50% of book value, while that of an outsider (uniformed bidder) was only 30%. The 20% discrepancy is a crude reflection of the cost of unreliable financial data.

Agency Committee (CDRAC). The country has made a tremendous progress in laying the legal and institutional support for good corporate governance. The task is far from over, however. There are many problems that have yet to be tackled. Corporate governance is molded by the local culture, the market environment and the legal framework formed over generations. It cannot be easily reformed.

This paper examines the nature of corporate governance in Thailand by a traditional industrial organizational approach of structure - conduct - performance. Part II of this paper begins with the study on the structure which will determine who owns and who controls listed companies in Thailand. The study on conduct will examine how the ownership and control structure of Thai companies affect the way they conduct businesses and whether such conducts are consistent with the principles of good governance. Finally, the study on performance will assess how such conduct affect the financial performances of these companies before and after the crisis. Part II will provide the conclusion and policy recommendations.

Part II : The Face of the Corporate Governance

The corporate ownership and control

The management of Thai business enterprises has been predominantly family-run as pioneered by Chinese merchants. Many of such families have prospered and built their empires that cut across many sectors, in particular, banking, finance and securities, agro-industry and telecommunications. Families such as the Sophonpanich (Bangkok Bank), the Lam Sam (Thai Farmers Bank), the Techapaiboon (Sri Nakorn Bank), the Chearavanont (CharconPhokaphand Conglomerate) and the Chirativat (Central Department Store and hotel chains) -- to name a few -- dominated the Thai corporate ownership landscape. When these family-run businesses become listed, the founder often keeps a controlling share within his/her family. This is evident in various studies on the corporate ownership structure in Thailand.

To examine who controls listed companies in Thailand, Table 1 tracks the top 5 shareholders in 150 largest companies listed in the Stock Exchange of Thailand (SET). Approximately one fifth were individual shareholders. Another 38% went to private companies or holding companies. Take note, however, that many of these companies are unlisted private companies that only serve the interest of a particular individual or family. These "captive companies" are easily detected as they are often named after the individual or the family's name. Thus, the figures presented below would underestimate the size of the family-based corporate control.

If we examine the top 5 shareholders by sector, we would find that the individual corporate is particularly prominent in two particular industries: the property and the finance and securities industries (see table 2). In the property sector, almost half of the top 5 largest shareholders are individuals, while in the finance industry, the figure is approximately one third. Interestingly, these are two sectors

Table 1
Type of ownership share of top 5 largest shareholders among 150 largest listed Thai companies in November 1997

Type of Investors	Share
Private Companies and Holding Companies	38.38
Individuals	21.38
Foreign banks (including securities and nominees)	15.41
Domestic banks	5.18
Finance and Securities Company	5.84
Insurance	2.00
Others	11.81

Source: Author's calculations from Stock Exchange of Thailand data on listed Companies

that are most responsible in the happening of the economic crisis. The property sector initiated the bubble economy, while the finance and securities sector aggravated the bubble through reckless lending. The property sector has just emerged from the long process of debt restructuring after almost two and a half years after the crisis, while the finance and securities sector still carries a non-performing loan ratio (NPL) that remains as high as 70-80%.

To assess the true extent control in the Asian corporate world, a study by the World Bank[2] traced the origins of large shareholders in listed companies in several Asian countries, including Thailand. The result reveals that 62% of the surveyed companies listed in the SET were controlled by a single family - i.e., the family's aggregated equity holding exceeded 20% of total shares. Only 6.6% of the companies are widely held by individuals. The share of the family-controled companies in Thailand is the third highest among the surveyed countries, behind Hong Kong and Indonesia.

Unlike Indonesia, however, a significant share of the corporate control in Thailand is not concentrated in the hands of a particular prominent family -- i.e., the Suharto family, which has an extremely expansive business network. The family-based corporate control in Thailand is shared among many families, as in the case in Hong Kong.

To summarize, despite the increased business and financial sophistication, the management among most listed companies remain family-run. The implications of family-oriented business management on the conduct and performance of the Thai corporate sector will be examined in the following sections.

[2] Bank study by Claessens, Stijn, Simeon Djankov and Larry Lang (1998)

Table 2: Composition of top 5 shareholders by sector (November 1997)

Sector	foreign banks	Thai banks	insurance	finance	company	individual	Government*	Others**	total
Agriculture	2.86	0	2.86	8.57	54.29	22.86	2.86	5.72	100
Banking	15.38	0	4.62	4.62	38.46	1.54	21.54	12.31	100
Finance	12.5	11.81	0.69	8.33	29.86	29.17	3.47	4.16	100
Insurance	14.29	14.29	5.71	8.57	40	8.57	2.86	5.71	100
Construction	23.33	0	0	0	53.33	13.33	3.33	6.67	100
Property	3.64	5.45	0	9.09	27.27	47.27	3.64	3.64	100

Source: Author's calculation from data from the Stock Exchange of Thailand
*Government holdings included shares held by the Crown Property, the Ministry of Finance, the Financial Institute Development Fund, State-owned enterprises, and other government organizations.
**Others include mutual funds and shares depository centre.

Table 3
Control of Publicly Traded Companies in East Asia

Country	No.of corporation surveyed	widely held	Family	State	Widely held financial	Widely held corporations
Hong Kong	330	7.0	66.7	14.4	5.2	19.8
Taiwan	141	26.2	48.2	2.80	5.3	17.4
Korea	345	43.2	48.4	1.6	0.7	6.1
Japan	1240	79.8	9.7	0.8	6.5	3.2
Indonesia	178	5.1	71.5	8.2	2.0	13.2
Malaysia	238	10.3	67.2	13.4	2.3	6.7
Singapore	221	5.6	55.4	23.5	4.1	11.5
Philippines	120	19.2	44.6	2.1	7.5	26.7
Thailand	167	6.6	61.6	8.0	8.6	15.3

Source: Claessens, Stijn, Simeon Djankov and Larry Lang (1998), Who Controls East Asian Corporations.

The Corporate Conduct of Thai Companies

A concentrated equity holding can contribute to both the strength and weakness of a company. Firms with concentrated ownership often possess a relatively stable ownership and durable relationships with suppliers, creditors and customers. That is why we rarely observe corporate takeovers in Germany and Japan where the ownership structure is concentrated. The opposite is true in the United States and the United Kingdom where the structure of the shareholding is dispersed.

At the same time, firms with a large shareholder often lack transparent management and effective internal control system. Thus, small shareholders are at risk of being marginalised. With a majority shareholding, the so called "owner" have the power to appoint directors and management, make major corporate decisions which require majority share approval, approve conflict-of-interest business transactions or even change the corporate charter. In short, they are able to run the company as if it still belongs exclusively to the family with little transparency and accountability to other small shareholders. Expropriation and misuse of company's funds have thus been the most serious corporate governance problem in Thailand.

Corporate abuse is most damaging when the business involves dealing with other people's money. *Connected lending* is probably the most prevalent and damaging form of abuse in the financial sector. This, again, stems from the local culture that gives importance to personal ties. To bankers, lending to someone you know is less risky that to those whom you don't know. This logic does sound rational in a way, but alas, it does not hold true during hard times. These so called "clean loans" -- i.e., loans with only personal guarantee and no collateral -- have been most difficult to recover.

The practice of connected lending is not only risky but also inhibits the bank's development of a sound lending policy. Because of the long-standing reliance on personal ties or individual's reputation, Thai banks failed to acquire solid technical skills in projects appraisal. Thus, the lending policy of commercial banks has always been intransparent, arbitrary and unpredictable and hence, conducive to abuse.

Besides connected lending, another widespread practice of corporate abuse is the *siphoning of company's* funds through the conduct of transfer pricing. There has been a case where the local owner lured several foreign investors to invest in a significant equity share in his/her business. But that business never registered a profit as it was purchasing raw materials at very high prices from suppliers owned by the local partner himself/herself. In the end, the plant had to be closed down. No one knows whether these people received their entitled severance payments. Such misdemeanor can be very damaging to various stakeholders involved.

Insider trading is another common practice of corporate abuse. On the eve of the collapse of many banks and financial and securities companies both before and after the crisis, major shareholders managed to sell off their equity shares to informed investors. Although securities transactions conducted by insiders are required to be reported to the Stock Exchange Commission,only a few companies do. Those that are aware of the fact that they might be charged for insider trading arrange to have the transaction conducted through a nominee[3].

Indeed, there are numerous corporate malpractices that constitute bad governance that concern other stakeholders such as employees, consumers and the state. For example, many companies fail to have their factories comply with the safety regulations, and provide severance payments to employees. These factories also dodge tax obligations and pollute the environment. To limit the scope of the discussion, this paper shall concentrate only on those practices that concern financial stakeholders, namely creditors and shareholders.

Why bad corporate governance?

Why does bad governance persist in the Thai corporate sector? According to the author's opinion, there are three major reasons. First, the government itself practices bad governance -- i.e. corruption, nepotism and cronyism. Second, the rules of law are inadequate and the enforcement is weak. Third, there is a lack of an effective internal and external monitoring mechanism among the listed companies.

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[3]In the United States, both the nominee and the insider can be charged for benefiting from misappropriation of information.

The corporate world does not exist in isolation. As mentioned earlier, good governance requires good political governance and a strong civil society that places demands on both the government and the private sectors. If the government is corrupt, how can businesses keep their hands clean? Will a construction company that refuses to bribe ever win a project from a corrupted government? Can an importer conduct businesses if he/she refuses to pay tea money to officers

Table 4
Investor Protection in Asia and Latin America

	Investor Protection	Creditor Protection	Judicial Enforcement
	(1)	(2)	(3)
India	2	4	6.1
Indonesia	2	4	4.4
Malaysia	4	4	7.7
Pakistan	5	4	4.3
Philippines	4	0	4.1
Sri Lanka	2	3	5.0
Thailand	3	3	5.9
Average	**3.1**	**3.1**	**5.4**
Argentina	4	1	5.6
Brazil	4	1	6.5
Chile	4	2	6.8
Columbia	1	0	5.7
Mexico	0	0	6.0
Vanezuela	1	NA	6.2
Average	**2.2**	**0.8**	**6.1**

Source: La Porta et al.(1997 and 1998).

(1) An index of how well the legal framework protects equity investors. It will equal six when (1)shareholders are allowed to vote by mail;(2)shareholders are not required to deposit share in advance of a meeting;(3)cumulative meeting is allowed;(4)when the minimum percentage of share capital required to call a meeting is less than 10%;(5)an oppressed minority mechanism is in place; and (6)when legislation mandates one vote per share for all shares (or equivalent).

(2) An index of how well the legal framework protects secured creditors.It will equal four when: (1)there are minimum restrictions, e.g., creditor's consent, for firms to file for reorganization; (2) there is no automatic stay on collateral; (3) debtor looses control of the firm during a reorganization; and (4) secured creditors are given priority during a reorganization.

(3) An index measuring the quality of judicial enforcement ranging from 1 to 10 (best) equal to the average of five sub-indexes measuring;(4) risk of expropriation;and (5) risk ofcontract repudiation.

Table 5: Corporate Governance Ranking

Country	US	HongKong	Germany	Japan	Thailand	Singapore	Malaysia	Philippines	Indonesia
1. Rights and Responsibility of Shareholders	12	13	9	44	43	6	32	28	42
2. Corporate credibility	26	7	20	31	32	1	15	5	42
3. Corporate Boards	17	21	9	41	43	2	32	23	44
4. Shareholder Value	3	14	18	45	42	5	33	25	43
5. Insider trading	13	24	10	18	45	2	29	36	44
6. Social responsibility	21	29	17	27	40	7	22	14	43
7. Industrial relations	23	11	15	3	24	1	12	27	39
8.Customer Orientation	1	`17	30	5	31	7	23	20	45
Average ranking	14.5	17.0	16.0	26.8	37.5	3.9	24.8	22.3	42.8

Note: Best ranking is 1 worst rankings is 46
Source: IMD, World Competitiveness Yearbook (1999)
Countries are ranked according to the extent to which:

1. rights and responsibilities of shareholders are adequately specified
2. the corporate enjoys public trust
3. the corporate board can prevent improper practices in corporate affairs
4. managers are efficient to generate value for shareholders
5. insider trading is uncommon in the market
6. responsibility towards the society is given adequate attention
7. relations between managers and employees are generally productive

at the Port Authority? Thus, good governance in the public sector is an important prerequisite for building better governance in the private sector.

But to blame bad corporate governance on state corruption would be a mistake. Malfeasance in the corporate sector unrelated to state corruption or bribery are commonplace as mentioned earlier. Is it because Thai businessmen are more cunning, irresponsible and selfish than their counterparts elsewhere? The author thinks not. All businesspersons are alike. Thai, Asian, European or American. Given the opportunity, he or she will maximize his or her own benefits. Thus, the only thing that makes them behave differently is the rule of law[4].

A study by theWorld Bank[5] reveals that the rule of law in Thailand does not offer sufficient protection for investors, and to a lesser extent, creditors. Our judicial enforcement is also weak and the court process is slow. An index measuring the relative degree of creditor and investor protection as well as the effectiveness of the judicial enforcement was constructed for cross-country comparative studies shown in Table 4.

The index figures show that Thailand, like many East Asian countries, lack sufficient investor (shareholders) protection. Although when compared with Latin American countries, we still fare better. As can be seen, Thailand scored 3 out of 6 and one-share - one - vote is not mandatory. The minimum percentage share of capital required to call a meeting is relatively high: 10% if the number of shareholders requesting a meeting is greater than 25, otherwise, the required share is 20%. In terms of creditor protection, we scored 3 out of 4 because there is not an automatic stay has allowed debtors to siphon off the values of the collateral in various ways while creditors await for a foreclosure order that often takes up to ten years because of the slow court process.

Indeed, the Thai court procedure is notorious in its sluggishness. That is why we obtain such a low score for judicial enforcement: only 5.9 out of 10. The problem stemmed mainly from the defendants' delaying tactics, which includes no-shows in hearings and submissions for further appeals ,even in cases where the defendant is clearly at fault (the legal cost in Thailand is not very high). However, with the creation of a bankruptcy court and the amendment of the bankruptcy law and a revision of the civil court procedures concerning foreclosures and attendance at hearings, the procedure is likely to be shortened significantly.

Weak legal framework and enforcement of corporate laws also contribute to many shortcomings in the management of public companies. For example, corporate boards in Thailand in general do not perform their duty as representatives of the shareholders in monitoring and scrutinizing management. This is because the

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[4]For example, American companies do not bribe officials because of the Foreign Corruption Law, which posits that any American citizen or American company engaged in the practice of bribery or corruption anywhere in the World can be tried in the United States.

[5]Alba, Pedro, Stijn Claessens and Simeon Djankov (1998).

scope of directors' responsibility as defined in the Public Company Law is too vague such that directors can rarely be held accountable for neglecting to perform their duties. As a result, large shareholders often staff the board with friends or family members, or managers or directors of their affiliated companies or subsidiaries rather than with professionals. Some of these directors sit on so many corporate boards that it is unimaginable how they can afford the time to properly monitor the

Table 6
The Number of Boards that Directors of Listed Companies Sit on in 1998

No. of director(s)	No. of boards they sit on	No. of directors	No. of boards They sit on
1	16	6	9
2	14	5	8
2	43	13	7
3	12	17	6
2	11	39	5
3	10	81	4

Source: Own calculation from SET corporate data

Table 7
The Structure and Shareholding in Major Countries

	Germany	United Kingdom	United States	France
	1990	1993	1992	1992
Institutional Investor	22	59.3	31.2	23
Banks	10	0.6	0.3	
Pension fund/insurer	12	51.5	23.9	
Others (unit trusts)		7.2	7.0	
Households	17	19.3	48.1	34
Private Companies	42	4	14.1	21
Government	5	1.3		2
Foreign Investors	14	16.3	6.6	20

Source: Lannoo, Karel (1996)

management of any particular firm (see Table 6).[6] It is thus no surprise that according to the World Competitiveness Yearbook 1999,[7] corporate boards in Thailand received the most dismal ranking--43 out of 46 (see Table 5).

Where directors seem to fail, so do auditors. Auditing is supposed to be one of the most important mechanisms whereby the financial records and business transactions of the company are scrutinized. The role of the auditor is particularly important when accounting standard is still poor, as is the case in Thailand. But again, auditors are often well acquainted with the company for which they perform their services. It is common that auditors close accounts for their customers.

The auditing profession suffered a severe damage to its already tarnished reputation when the SET temporary withdrew its certification of profession of two well-known auditors from two reputable auditing companies -- one Thai, the other foreign. While such a penalty itself may not be severe,[8] the social sanction proved much more caustic.

Where corporate internal control fails, it may be necessary for other stakeholders, such as creditors or shareholders, to fill in the role to ensure sound management. For example, commercial banks in Germany and Japan are extensively involved in the management of the companies to which they lend. In the United States and the United Kingdom, institutional shareholders such as pension funds, investment banks, mutual funds and insurance companies use their block holding as leverage in getting involved with management in the companies in which they choose to invest (see Table 7).

The size of the investment fund of some of these institutional investors can be overwhelming, which gives them a lot of bargaining power. For example, the CalPERS (California Public Employee Retirement System), a non-federal pension fund whose size of investment fund is US$126 billion, has been a worldwide leader in pressuring companies to improve their corporate board standards. Recently, CalPERS have taken further steps to become more involved in monitoring the management of companies in which it invests. For example, it has dispatched its own representatives to sit on the board of troubled companies.

The role of institutional investors and commercial banks in the management of listed companies in Thailand is rather limited. Presently, institutional holding repre-

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[6]Note that these figures do not include unlisted companies. Otherwise, the numbers can be much higher.

[7]The World Competitiveness Yearbook published by International Institute for Management Development (IMD), the independent non-profit organization in Switzerland, offer few indicatrors related to governance. Countries' competitiveness in various aspects such as government, finance, infrastructure, management, technology, etc. are ranked according to quetionnaires returned by 2500 chief executives and economic leaders in 46 countries which the survey covers.

[8]The revised auditing law, currently scrutinized by the parliament, imposes harsher penalties.

sents a mere 8% of the total value of equity holding. This figure is miniscule compared with those in the United States (31.2%) or in the UK (59.3%).

The promotion of institutional investors in the case of Thailand should be made with much caution, however. First, institutional investors themselves do not have good corporate governance. After all, were it not because of the reckless lending these financial institutes engaged in that we are where we are today? How then can one expect to rely on these institutes to raise the standard of our corporate governance? In June 1998, the Stock Exchange Commission temporarily withdrew professional licenses from four executives of one of the oldest mutual fund in Thailand. Two charges were laid on these executives: one for investing with "conflict of interest"-- i.e., investing in business they own-- and the other for imprudent investment.

As for the role of the commercial banks, one cannot help but wonder why commercial banks or finance and securities companies-- as creditors-- were not more involved in monitoring the companies to which they lend extensively as most housebanks such as those in Germany and Japan often do. This may be due to two reasons.

First, a large part of the loans extended by commercial banks was secured through personal connections rather than through a proper project appraisal. Such a practice may be befitting in the past when the business circle is closely knitted and families are well acquainted with one another's businesses and financial needs. Such is not the case to date. As family businesses grew increasingly complex, lending through personal acquaintance become increasingly risky as the lender no longer has a full understanding of the nature and the prospect of the business projects to which he/she lent.

Second, lending was extremely competitive during the bubble era. Everyone was willing to handout credits. If a bank imposed too many conditions on loans, a company could simply take its business elsewhere. During euphoria, prudence seemed unnecessarily costly. With insufficient regulatory supervision and inadequate internal control, there was a race to the bottom in terms of quality of loans extended. Reckless lending was contagious.

To conclude, weak rules of the law, lack of enforcement as well as bad governance on the part of the State harbour bad corporate governance. Thai companies are managed with very little transparency and accountability, with large shareholders and their cronies at the helm, reaping private benefits at the expense of the company and minority shareholders.

Such practices are able to persist as a result of a lack of an effective monitoring mechanism either from the internal control system, such as board supervision and auditing, or from other financial stakeholders including creditors and shareholders. This has contributed to the deterioration of corporate performance as we shall see in the next section.

Corporate Financing and Performance

The corporate financing in Thailand has always been debt-based. In 1996, bank loans contributed to 62% of corporate financing, followed by equities at 32% and bonds at 6%. The marked reliance on debt-financing can be explained by both the demand-side and the supply-side rationale. On the demand side, debt is usually preferred over equity because, unlike dividends, interest payments can be written off as expenditures. But for family-run businesses, debt financing also offers another advantage: it helps preserve the incumbent's equity share and hence, the corporate control.

On the supply side, the relatively high interest rates on deposits sustained by an oligopolistic banking industry inhibited the development of alternative source of financing, namely bonds and securities. Chronic fiscal surpluses during the period of rapid economic growth also precluded the issuance of government bonds, without which the bond market became too thin to support a secondary market.

Because of its many advantages and the lack of alternantive sources of financ-

Table 8
Deteriorating Corporate Performance

Period	Number of Firms	Interest Coverage ratio	No. of Firms with profits less than interest expense %	Leverage
1999:Q2	386	2.81	150 (38%)	2.61
1999:Q1	397	4.56	191 (48%)	2.85
1998:Q4	400	2.05	194 (48%)	2.94
1998:Q3	414	3.81	174 (42%)	3.18
1998:Q2	416	1.16	266 (63%)	3.48
1998:Q1	421	4.86	97 (25%)	2.96
1997:Q4	356	1.49	114 (36.4)	2.95
1997:Q3	356	2.59	83 (30.8)	2.95
1997:Q2	357	3.18	71 (18.4)	2.12
1997:Q1	353	3.66	54 (16.2)	2.01
1996:Q4	354	3.11	49 (11.8)	1.90
1995:Q4	354	4.01	34 (7.6)	1.67
1994:Q4	352	5.78	18 (1.4)	1.50

Source: (before 1998: Q1) Claessens and Simeon Djankov (1998). Thailand's Corporate Financing and Governance Structures: Impact on Firm's Competitiveness. Paper presented at the Conference on Dynamic Economic Recovery and Competitiveness, 20-21 May 1998, Bangkok.
(from 1998:Q1) TRRI calculations from SET data

ing, debt was the sole financial locomotive behind the pre-crisis rapid economic expansion. Consequently, the debt/equity ratio, or the leverage ratio, among Thai companies rose dramatically from 1.5 in the fourth quarter of 1994 to 2.12 in the second quarter of 1997, on the eve of the economic crisis (see Table 8 on the following page).

This ratio was highest among those of East Asian countries with the exception of South Korea and Japan, which showed leverage ratios of 3.54 and 2.37 in 1996 respectively. With such a heavy debt burden, Thai companies were clearly very much vulnerable to external shocks. The sharp depreciation of the baht in July 1997 pushed these companies deeper in dept. Coupled with a sharp drop in domestic and foreign demands, Thai companies were squeezed by both falling revenues and increasing costs.

The performance of Thai companies deterioted sharply after the crisis. The average leverage ratio jumped from 2.12 to 2.95 between the second and the third quarter of 1997. Likewise, the interest coverage ratio decreased from 3.18 to 2.59 during the same period. The financial condition continued to worsen and appeared to hit the bottom in the second quarter of 1998. The leverage ratio peaked at 3.48, while the interest coverage ratio dropped to only 1.16 with 266 companies facing interest expenses that were greater than their profits. While the figures have improved since then, the numbers still do not compare with those before the crisis. This shows the extreme fragility of the financial condition of the listed companies.

What impact does the crisis have on corporate governance?

The current crisis changed the face of the Thai corporate governance in two ways. First, the crisis has rid of much of the family businesses, in particular those in the financial industry.[9] Second, in recognition of the serious flaws in the corporate governance that were exposed during the time of the crisis, the Stock Exchange Commission has begun to take tougher measures to promote better governance among listed Thai companies.

Struggling to emerge out of a massive debt burden as a result of a sharp depreciation of the baht and the burst of the economic bubble, many of these family-run business empires have had to shed many of their subsidiaries to keep their core businesses afloat. Other less-fortunate ones have had to sell off large equity shares in their core businesses. Those involved in banking for generations saw their ownership evaporate within a stroke of government's mandated capital write downs, while those in finance and securities lost their entire business through the mandatory shut down and subsequent nationalization of 56 finance companies in 1997. Many companies that survived the crisis have had to surrender a large (sometimes controlling) equity share to foreign investors (see Table 9). Indeed, the current crisis have had, and will continue to have, a significant impact on the Thai corporate ownership structure like never before.

The crisis no doubt revealed many underlying weakness of our governance. Thus, the Stock Exchange Commission has begun to take serious punitive and preventive measures against corporate malfeasance. First, it appears to break away from the traditional culture of non-confrontation and non-exposure. Those who committed corporate malfeasance will not only be fined, but their identities will also be revealed.

For example, insider trading has always been a crime. Each year, a few directors or managers will be fined twice the amount of gains generated from such a trading. But no one knows about these cases as the SEC has made a "hush" deal with the violators. The law was breached, penalties were paid, but the identities of violators were never disclosed. Things have changed, however. Recently, the SEC announced that it would disclose the names of those convicted of insider trading. The disclosure of the identity of those convicted in the past are now being debated.

The disclosure of identities is not limited only to inside traders, but also directors, managers and employees who have committed corporate malfeasance. Auditor and auditing companies have also become subject to the SEC's recent tightening of the regulatory supervision and enforcement. Many of these executives have been blacklisted by the SEC, which means that they are barred from holdinga directorship in any company for a particular period of time as dictated by the SEC. All these contributed to greater accountability in business management.

Second, the SEC has taken several preventive measures to improve the accounting and disclosure standard of listed companies. For example, an auditing committee is made mandatory for all listed companies in the year 2000 [10]. The committee should consist of at least three (3) independent members to ensure an acceptable degree of independence of the committee from the management or large shareholders.

Consolidated accounting rules are also being revised. At present, two companies have to consolidate their accounts only if one holds not less that 50% of the other's equity share. Recognizing that corporate control can be easily exercised through nominees, the SEC is considering lowering the threshold level of equity share that will mandate a consolidated accounting from 50% to 30%. Stricter enforcement on compliance to the accounting report is also in place. A listed company that failed to submit its financial report to the SEC on time was suspended from trading.

Finally, to promote more equitable governance, the SEC is revising several

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[9]The only remaining family-run banks are the Bangkok Bank Ltd. and the Thai Farmers Bank Ltd., which belongs to the Sophonpanich family and the Lam Sam family respectively.

[10]Listed companies that do not have a transparent management are having a difficult time finding independent auditors. As of October 1999. over 170 listed companies are still unable to establish an auditing committee.

Table 9 (1): Foreign acquisition of ownership among Thai listed companies in 1998

Industry	Thai Company	Foreign share(%)	Detail
Banking	Bangkok Bank (BBL)	48.78	The Govt. of Singapore Investment Corporate
	(ABN Amro Asia)		
	Bank of Asia (BOA)	NA	ABN Bank 75% share (3/98)
	Bank of Ayudhya	7.74	
	Krung Thai Bank	12.64	
	Siam Commercial Bank(SCB)	NA	Sanwa Bank 7.4% share (11/98)
	Thai Danu Bank (TDB)	NA	The DBS 54.5% share (11/98)
	Thai Farmers Bank Plc.(TFB)	NA	GIC 15.1% share (11/98)
Building & Furnishing	Nakomthai Strip Mill (NSM)	NA	US Financier Gerprge Soros
	Siam City Cement (SCCC)	25	Holder bank of Switzerland 25% share (11/98)
	Siam Cement (SCC)	47.63	
Chemical	GSS Tech	85.14	
	Hana Microelectromics (HANA)	86.39	
	National Petrochem (NPC)	22.49	
	Thai Plastic	25.91	
Commerce	Siam Makro Plc	45.06	
Communication	Shinawatra Satellite (SATTEL)	24.76	
Energy	Electricity Generating Plc (EGCOMP)	44.9	China Light & Power 14.9% share (11/98)
	PPT exploration and production	32.16	
	The Congeneration Plc. (COCO)	59.83	Sithe Pacific up to 65% share (11/98)

Industry	Thai Company	Foreign share(%)*	Detail
Entertainment	United Broadcasting	43.17	Multichoice Int'l Holding
Finance & Securities	Adkinson Securities Public Co., Ltd. (ASL)	45.01	Global Asia Capital, Sinostar Ltd.
	Asia Credit (SG Asia Credit)	NA	Societe General Cosby 51%
	Asia Securities Trading (AST) (ABN Amro Asia Securities Trading)	38.62	ABN Amro Hoare Govett Asia 35.5% (11/98)
	Bangkok Investment (AIG Finance)	78.79	AIG Group 70%
	Ekachart Securities (EFS)	NA	BNP PrimeEast 70%
	Kiatnakin (KK)	28.8	KEB, Bank of Tokyo, etc. 17.8%
	National Finance & Sec (NFS)	41.5	GIC 6.5%
	NAVA Finance	NA	Taiwan's Yuanta 49%
	Seamico Securities (ZMICO)	NA	Dharmala Capital 33.36% (8/98)
	Securities One (S-ONE)	48.12	KG Inverstment Taiwan 51% (11/98)
	Sri Thana DBS Securities	100	DBS Securities 100%
	TISCO	51.77	Bankers Trust 75% (11/98)
	Union Securities	100	Indosuez WI Carr 100%
Household Goods	Srithai Superware (SP)	NA	Berli Jucker
Insurance	Nam Seng Insurance (NSI)	NA	HIH Wnterhur Overseas Holding Limited 24.46% (4/98)
Mining	Padaeng Industries Plc. (PDI)	NA	Western Mining
Property	Land and House (LH)	30	

Industry	Thai Company	Foreign share(%)*	Detail
\Pulp & Paper	Advanced Agro (AA)	37.04	Enso
Non list company	Advanced Agro Co., Ltd.	NA	Enso
	Lotus Supercentre Chain	75	Tesco Plc.
	Mitsubishi Material (Thailand)	NA	Mitsubishi Material Corp.
	New Chemical Factory	NA	Sanyo Kasai
	Phatra Securities	51	Merrill Lynch
	Shin HO Paper	NA	Norske Skogindustrier
	Suretax Rubber	NA	Pacific Dunlop
	Thainox Steel	NA	Usinor-Sacilor

Source: *Capital Nomura, Monthly Review, November-December 1998

Table 9(2): Foreign acquisition of ownership among Thai listed companies in 1999

Industry	Thai Company	Foreign share (%)**	Detail
Banking	Bank of Asia Plc.(BOA)	76.77***	ABN Amro Holding NV 76.77%
	Thai Farmers Bank Pic. (TFC)	48.98	Govt. of Singapore Investment 8.23% (3/99)
	Raltanasin	75	BankUnited Overseas Bank
	Nakom Thon Bank	75	Standard Cahtered 75%
Finance & Securities	Securities-One (S-ONE)	49	KG Investments Taiwan
Non-listed company	Hua Seng Group-Coal-fuel	NA	CMS Energy Corp.
	Joint Development Area	NA	ARCO
	Metro Resourse Ltd.	NA	Asia-Pacific Resourse Ltd.
	Nithipal Capital & Securities	NA	Kim EngHolding Ltd.
Phatra Securities	NA	Merrill Lynch	
	Siam Polythylene Co.Ltd.	NA	Indorama Polymers
	Thailand Residential Mfg.	NA	Lehman Brothers Holding Inc.

Source:**HSBC Securities (Asia) Limited, information as of November 1999

:***unofficial information acquired by telephone as of November 1999 provisions in the Public Company Act to guarantee greater small shareholder's rights. These include provisions on shareholder's rights to vote in electing directors, to call an emergency shareholders meeting and to have timely access to shareholders' meeting reports.[11]

At the same time, the SEC has been more active in protecting the interest of minority shareholders. Recently, the Commission stopped a listed company from issuing a large lot of equity shares and warrants to certain executives and board members. These shares and warrants would have generated for each of the recipients US$7 million of instant profits. The SEC had asked small shareholders to come forward to request a shareholders' meeting so that the matter can be voted by all shareholders.

To conclude, the crisis has revealed the dark side of our corporate governance, which has been hidden behind many years of economic exuberance. Hardship has been the seed of unprecedented changes in the corporate culture in Thailand. Directors and insiders who commit corporate malfeasance now face increasing risk of not only of being caught and meted with heftier fines, but also of being exposed and faced with social sanctions. The latter can prove much more caustic and hence, a potentially more effective tool in deterring corporate abuse.

Conclusions

Traditional family-run companies in Thailand have yet to adapt themselves to the new corporate environment. As a private company, the absolute corporate control may no doubt lend much managerial flexibility and adaptability that had allowed the businesses to flourish in the past. As a listed company with public ownership, however, such absolute control runs against the basic concept of accountability, equity and transparency, the three pillars of good corporate governance.

Where should the reform begin? At the heart of any good governance is information. Without adequate and accurate data,we cannot penetrate the corporate veil. And, with unreliable information, there is little rationale in promoting greater disclosure. Thus, accounting should be the very first target of reform. Once good accounting is intact, abusive behavior by insiders will be much more easily detected and dealt with.

The next step would be to ensure that abusers are held accountable for their misconduct and are duly punished. That is, the Insider Trading Law, Public Company Law and Money Laundering Law must be strengthened to deter undersirable corporate misconduct. The efficiency of the judiciary process is also of utmost importance. Cumbersome court procedures can certainly undermine law enforce-

[11]What is still missing is shareholder's right to be informed of all conflict-of-interest business transactions.

ment as is the case of Thailand.

Speaking of building good governance, one must realize that good or bad governance is not a question of ethics, but economics. The Gresham's Law of bad money chasing out good money also applies here. If bad corporate governance is allowed to prevail and prosper, good corporate governance will never be born. For example, if your competitor can get away with manipulating or even falsifying financial reports to make the company look better that it actually is, then why should you submit a veritable report that may make your company look worse than your competitor's? Similarly, if the factory next door pollutes the river, dodges tax dues, and does not abide by the safety laws and gets away with it, why should you practice good governance?

Thus, bad corporate governance must be sufficiently penalized so that good corporate governance pays. Government efforts should thus be focused on strengthening the regulatory supervision and ensuring that penalties are made much harsher for corporate abuse and professional liability. Indeed, much of corporate governance is in the law and its enforcement.

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