Feature Article Issue 8

What do we "EXPECT" from the Board?

What do corporate directors do?
How is the "Board compensation" paid?

Chinapat Visuttipat
Partner, ONE Law Office

What do corporate directors do? The answer to this question can be found in the "corporate laws" comprising from the Civil and Commercial Code (private companies), Public Limited Companies Act and the Securities and Exchange Act (listed companies).

a. Directors are "juristic person's representatives" (Agency Concept), acting "on behalf" of the company (juristic person) to engage in "legal transactions and contracts", "express intention", and "are liable" for the company's actions.

b. Thai laws only recognize corporate director who is a natural person and the status of "corporate director" is "exclusive". Nobody can be authorized to attend meeting or vote on behalf of a director. The directorship ends when the director passes away, and their position can neither be inherited nor transferred.

c. Directors are "trustees" of "equity owner" (shareholder) (Fiduciary Concept). They act as trustee who look after the unit holders' benefit of mutual funds or REIT (Real Estate Investment Trust). They also act as an "executor" who take care of the "undivided estate" or "estate" for inheritors.

d. The level of expectation from "corporate directors" that the law set depends on "equity owners" because directors act for the benefits of "shareholders" who is the first "stakeholder" in the corporate environment.

Limited companies must have a minimum of 3 shareholders, thus depict that the law has a certain level of expectation from directors. Public companies must have a minimum of 15 shareholders, depicting that the law has a greater level of expectations from directors. Listed companies may have hundreds or even millions of shareholders and, therefore, directors of "listed companies" have to carry the largest legal expectation. This "concretely" reflects in legal stipulation of roles and responsibilities of corporate directors as well as liabilities and penalties in civil, criminal, and administration aspects.

Performance of corporate directors can be concretely measured by: (A) meeting attendance; (B) expression of opinions and raising "key questions" in a meeting; and (C) voting in a meeting to drive corporate growth.

A proof of director's performance lies in "Board meeting minutes", reflecting "teamwork" and "collective votes" of the Board through thorough consideration from the "Board" and not from a "single vote".

Director performance can be measured by scientific valuation through the "quality" and "quantity" of Board meetings. Director's contribution must meet the "legal expectation", if the director's contribution falls short from the legal expectation or conflicts with director's duties, the director will be held liable. Thus, to be fair with the director who act for the "benefits of the company and shareholders" (Other People Money) and carrying legal risks, the company should offer a fair "director compensation" to "compensate" and "motivate" directors to be working dedicatedly for the company.

At present, The Thai Institute of Directors has recently distributed the summary of "Director Compensation Survey 2020" of listed companies (see link: http://www.thai-iod.com/th/publications-detail.asp?id=698&type=3).

Thai Institute of Directors

Do you know how directors pay tax on their compensation?

According to the survey result, “Director Compensation” in the form of financial benefit includes:

A) Meeting Allowance...The allowance will be paid in accordance with the actual meeting held and proof of attendance. Without a meeting, the allowance will not be paid. There is no minimum number of Board meeting required by laws for private limited companies. However, Boards of public companies (including listed companies) are required by law to hold a meeting for at least 4 times a year. Board of many companies meet more frequently than the minimum 4 time requirement in a year as they do not only meet to “approve financial statements” every quarter but they intend to make key corporate decisions such as starting a new project or signing new critical contracts.

B) Monthly Fee...The monthly fee is paid on a monthly basis in an equal amount. The fee does not depend on the number of meetings being held (the Board meeting mostly takes place monthly anyway). However, this does not mean “the Board has a salary”. The monthly fee reflects work of the Board according to numbers of Board meeting the director attends, neither full-time nor a day-to-day operations. The Board is not the company’s employees , except the Executive Directors who “wear several hats” as a member of the Board in the organization chart and is also an employee or an executive of the company.

C) Director Bonus ... The bonus will be paid annually in lump sum. The amount of bonus paid to the Board depends on corporate performance while number of directors will also be taken into account.

Most listed companies pay their directors bonus “based” on the company’s “earnings” or “dividend” paid to shareholders. Questions arise whether it is legal to pay director bonus this way, what “financial damage” would possibly be caused to the company and how the bonus payment could affect “financial statements” of the company.

In the next episode, we will discuss the “financial damage” from paying “director bonus” based on corporate “earnings” and paying director compensation in a form of non-financial benefits such as ESOP shares, corporate car, health insurance, key man insurance, etc. along with its tax points through actual case studies.

Thank you,

Chinapat Visuttipat
ONE Law Office
ONE Law Academy
www.onelaw.co.th