How to Succeed in Establishing Corporate Compliance & Ethics within Thai Companies

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Topics:

I. Major compliance and ethics requirements which a public company in Thailand has to comply as a minimum requirement

II. Why it is important to a Thai Company to have a Corporate Compliance & Ethics Culture?

III. How to Implement a Corporate Compliance Program of SCCE to Thai Companies?

IV. Key issues and practical compliance steps which should be considered to achieve this purpose in a sustainable manner
I. Major compliance and ethics requirements which a public company in Thailand has to comply as a minimum requirement

II. Why it is important to a Thai Company to have a Corporate Compliance & Ethics Culture?

PTT Group Businesses

- 7 Listed Companies
- A few hundred subsidiaries / affiliates
  - Wholly – owned
  - Largest shareholder
  - JV
  - Minority shareholder
- **Legal Requirements**
  - Public Company Act and Securities Act
  - National Anti-corruption Act
  - Criminal Liability of Representatives of Juristic Persons

- **Good Corporate Governance (CG)**
  - CG Code / Principles for Listed Company by Thai SEC and Stock Exchange
  - OECD Guidelines
  - CG of State-Owned Enterprises by World Bank
  - CG Principles and Guidelines by State Enterprise Policy Office, Ministry of Finance

- **Social Pressure e.g. Investors, Public, Community**
  - Sustainability
  - SDGs
  - ESG (Environment, Social & Governance) Investment Policy

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**Good Corporate Governance Structure**

- Shareholders
- Board of Director
- Management & Employee

- Establish policy, strategies and directions, also govern and monitor
- Managing & Report
- Value Added
- Impact
- Appointing and performance assessment

Operate with CG&CC
Fiduciary Duty of Directors and Management

- Performance
- Conformance (Overseeing)

Thai Public Company Act & Securities Act

Fiduciary Duty

- Duty of Loyalty
- Duty of Care
- Duty of Obedience – Compliance with laws, objectives, articles of association, resolutions of BoD and shareholders
- Duty of Disclosure – Correct, complete, transparent and on-time
PTT CG Principles

RISKS

• Business
  – Disruption
  – Competition

• Operation
  – Natural Disasters
  – Accidents
  – Strikes

• Financial
  – Sources of Fund
  – Costs
  – Currency

• Legal & Compliance
  – License to Operate
  – Corporate and Personal Liabilities

• Reputation
  – Lack / Breach of Trust
What is the single most important risk that your organisation faces?

- Cybersecurity: 12%
- Compliances: 16%
- Digitalisation: 9%
- Regulatory change: 8%
- Political uncertainty: 8%
- Data security & protection: 6%
- Culture: 6%
- HR & people risk: 5%
- Innovation: 5%
- Corporate governance: 3%
- Outsourcing & third party risk: 3%
- Financial controls: 3%
- Supply chains: 2%
- Mergers and acquisitions: 1%
- Financial reporting: 1%
- Environment and climate change: 1%
- Other (unspecified): 1%

Which of the following are one of the top five risks your organisation faces?

- Cybersecurity: 66%
- Compliances: 58%
- Data security & protection: 56%
- HR & people risk: 42%
- Regulatory change: 37%
- Digitalisation: 36%
- Innovation: 26%
- Culture: 25%
- Outsourcing & third party: 24%
- Political uncertainty: 23%
- Corporate governance: 22%
- Supply chains: 17%
- Mergers and acquisitions: 16%
- Financial reporting: 8%
- Environment and climate change: 8%

Source: Website of CIIA

The Organic Act on Counter Corruption, B.E. 2542 (1999)
(as amended by (No. 3), B.E. 2550 (2013))

Section 123/5

"Whoever grants, offers to grant, or promises to grant any property or other benefit to any state official, foreign state official, agent of a public international organization with intent to persuade such person to wrongfully perform, not perform or delay the performance of any duty in his office shall be subject to an imprisonment for a term not exceeding 5 years or a fine not exceeding Baht 100,000, or both."

"If the offence under paragraph one is committed by any person related to any juristic person and the act is taken for the benefit of such juristic person, and the juristic person does not have in place appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this section and shall be subject to a fine of one to two times of the damages caused or benefits received."

A person related to the juristic person under paragraph two shall mean an employee, a representative, an affiliated company, or any person acting for or on behalf of such juristic person, regardless of whether having the power or authority to take such action."

Source: Office of the National Anti-Corruption Commission

: Now, Section 176 under the Act, enacted in 2017
Section 123/5 concerns with offences of bribery of state officials, foreign public officials and agents of public international organisations, and liability of juristic persons involving in such bribery.

Both “individual” and “juristic person” may be held criminally liable under this section.

A juristic person may be held liable if its personnel or business partners involve in bribery of state officials for the benefit of such juristic person.

A juristic person shall not be liable if it has in place appropriate internal control measures against bribery.

Appropriateness of measures depends on various factors, e.g. nature and structure of business, level or exposure of risk of bribery of state officials feasibility of actual implementation, etc. Appropriateness of measures, therefore, will be considered on a case by case basis.

Penalty of “the bribe-giver” or “briber” is imprisonment of up to 5 years or a fine of up to Baht 100,000, or both, and penalty of the “juristic person engaging in bribery” is a fine of one (1) time to no more than two (2) times of the damages caused or benefits received.

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III. How to Implement a Corporate Compliance Program of SCCE to Thai Companies?

Samples

- IRPC CC Policy
  - [https://tinyurl.com/y2cluylz](https://tinyurl.com/y2cluylz)

- PTT
  - [www.pttplc.com](http://www.pttplc.com)
    - CG → Compliance
Resources: Knowledge

• Always have a good knowledge of the business
• Know the key compliance issues relevant to the company?
• What does the law say about compliance?
• Find out the source – either domestic and/or international (can be a reference)
• **SCCE is the best source to reference for a corporate compliance & ethics theory & best practice**
• Maintain a broad & wide knowledge

Knowledge / Best Practice from SCCE

• Seminar & Training
  Conference
  Webinar
• Information
• Survey Result
• Job board
• Update & etc.
Knowledge / Best Practice from SCCE

Design your Corporate Compliance Framework / Road Map and Action Plan

Align your draft of Road Map & action plan to your promoter or support & best friends
Sustaining the Culture

• Must have a corporate compliance & ethics policy, process, procedure etc...

• Must have a permanent communication channel to all users

• Must be at least a permanent agenda item/s in Management Committee & Board Meeting

What you get is what you do?

• Keep evidence or information that demonstrates that there is compliance in the organization

• At all times for Thai companies, training & communication remains vital and are the heart of compliance & ethics program
Communication: CC News

What are the biggest challenges or concerns?

- Environment
- Culture
- Tone at the Top / Supporter
  - Fact & Reason
- Compliance & Ethics Information / Knowledge
PTT Group Branding Sustainable Growth for All

Social
Community Shared Value

Environment
Resilient to Climate change & Waste management

People
Sustainability

Planet
Prosperity

Governance
Business integrity for trust

WORKFORCE: Shaping people for the future

Business Integrity as Safeguard and Build Trust
What is GRC?

GRC is the integrated collection of capabilities that enable an organization to reliably achieve objectives, address uncertainty and act with integrity.

Risk Management
Enables an organization to evaluate all relevant business and regulatory risks and controls, and monitor mitigation actions in a structured manner:
- Risk identification
- Risk assessment
- Risk Appetite
- KRIs
- Controls testing
- Risk analysis
- Risk aggregation
- Loss events
- Issues tracking
- Accountability and communication of risks

Governance
Is the oversight role and the process by which companies manage and mitigate business risks:
- Mission and Vision
- Roles and Responsibility
- Organization structure
- Accountability and communication

Compliance
Ensured that an organization has the processes and internal controls to meet the requirements imposed by government bodies, regulators, industry mandated or internal policies:
- Issues tracking
- Continuous auditing / monitoring
- Remediation tracking
- Regulatory change management
- Regulatory and policy management
- Ownership and communication

Achieve objectives
Address uncertainty
Act with integrity
Compliance Policy

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2nd Line of Defense Alliance

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GRC Cultural Behavior

- Lead By Example
- Communicating and Promoting Ethics and Values
- Reporting
- Reward Integrity

- Think Before You Act
- Understand Key Risk
- Do the Right Thing
- Dare to Fight Fraud (Zero Tolerance to Fraud)

Tone from the top
Mood in the Middle
Buzz at the bottom

All Employees are “PTT Ambassador”

Awareness
"I know it"

Acceptance
"I can explain it"

Action
"I live it"

Advocacy
"I promote it"

Social
Environment
Governance
Workforce

PTT Group Way of Conduct
Streamlined GRC down to Operational Level

Counterparties Ethical Analytics & Screening

Shaping Integrity Culture
PTT Group Compliance Road Map 2018-2022

- PTT Group Compliance Culture (Zero-non compliance)
- Compliance Digitalization and Centralized Report
- Policy
- Process/Report
- Culture
- Zero Non-Compliance

PTT Group Compliance Startup

Information Integration 2020

2019

2018