

A Drive to Scandal

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Abstract

The case chronicles SECC's progression from its early days, when it was perceived by consumers to be the leader in the imported automotive business, to its successful public listing in the Stock Exchange of Thailand in May 2006. Further described is how trading in the company's initially perceived mundane shares received an extraordinary boost when in 2008, SECC's management announced that the company had won the bid on the government's NGV bus project. With the worth of the project valued at more than 62,600 billion baht for the 4,000 buses that SECC was to procure for the government, the announcement was well received by the investing public. This announcement, the case demonstrates, became the impetus for the ensuing nearly unbridled speculation on the prices of SECC stocks by many investors in the market – speculation that continued virtually unabated right up to November 27, 2008, when pursuant to emerging new details concerning the misconduct of SECC's founder and chairman, Sompong Witthayaraksan (who was rumored to have fled the country), the Stock Exchange of Thailand (SET) announced that a ("SP") had been placed on SECC stocks.

The case provides copious details of the various forms of fraudulent behaviors and other misconduct perpetrated by the company's directors. Specifically, with results of an external auditor's report on the internal operations of the firm, the Securities and Exchange Commission of Thailand subsequently charged the director and his accomplices with the following breaches of the Securities and Exchange Act.

Keywords: Listed Company in SET, Fraudulent, Agency Theory and Corporate Governance

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เส้นทางสู่ความอื้อฉาว

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บทคัดย่อ

กรณีศึกษานี้เป็นกรณีศึกษาเกี่ยวกับ บริษัท เอส.อี.ซี.โอโต้เซลส์ แอนด์ เซอร์วิส จำกัด (มหาชน) หรือ SECC ที่อธิบายตั้งแต่การเริ่มจดทะเบียนเป็นบริษัทนำเข้ารถยนต์เล็ก ๆ จนนำไปสู่การทุจริตทางการเงินที่ใหญ่ที่สุดในประวัติศาสตร์ของประเทศไทย SECC เคยเป็นหนึ่งในผู้นำธุรกิจด้านการนำเข้ายานยนต์ บริษัท SECC จดทะเบียนในตลาดหลักทรัพย์แห่งประเทศไทยเมื่อเดือนพฤษภาคม 2549 และอีกสองปีต่อมานักลงทุนก็ต่างให้ความสนใจต่อหุ้นของบริษัทเป็นอย่างมากเมื่อบริษัท SECC ประกาศการเข้าร่วมเสนอราคาในโครงการรถเมล์เอ็นจีวีของภาครัฐด้วยมูลค่าของโครงการที่มากกว่า 62,600 ล้านบาท โดยที่บริษัท SECC จะทำการจัดหารถเมล์ 4,000 ให้แก่รัฐบาล ผลพวงจากข่าวนี้เองทำให้เกิดแรงผลักดันที่นักลงทุนจะหันมาเก็งกำไรในราคาหลักทรัพย์ SECC จนกระทั่งเมื่อวันที่ 27 พฤศจิกายน 2556 ได้มีข่าวลือแพร่สะพัดในวงการเกี่ยวกับการหายตัวไปอย่างไร้ร่องรอยของนายสมพงษ์ วิฑยารักษ์สรณ์ ประธานเจ้าหน้าที่บริหารและผู้ก่อตั้งบริษัท SECC จนในเวลาต่อมาตลาดหลักทรัพย์แห่งประเทศไทยจำเป็นต้องประกาศเครื่องหมาย “SP” ห้ามซื้อขายหลักทรัพย์ SECC

กรณีศึกษานี้ให้รายละเอียดการฉ้อโกงของบริษัทจดทะเบียนในรูปแบบต่าง ๆ ตลอดจนพฤติกรรมการหลอกลวงและการกระทำผิดโดยกรรมการของบริษัทอันก่อให้เกิดผลกระทบต่อบริษัทและราคาหลักทรัพย์ และเป็นสาเหตุของการตรวจพบความบกพร่องของระบบการกำกับดูแลและตรวจสอบภายใน ซึ่งสุดท้ายสำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์ (สำนักงาน ก.ล.ต.) ก็ได้ดำเนินการเอาผิดกับผู้บริหารและผู้สมรู้ร่วมคิดในประเด็นของการละเมิดพระราชบัญญัติหลักทรัพย์และตลาดหลักทรัพย์ด้วย

คำสำคัญ: บริษัทจดทะเบียนในตลาดหลักทรัพย์ฯ การฉ้อโกง ทฤษฎีตัวแทน การกำกับดูแลกิจการ

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“ . . . The SEC has a strong determination to develop the Thai market to be for all and can actually respond to all parties’ needs. Our market will have strong immunity based on good corporate governance practice, and be an important source of fund raising and investment for the private sector and investors -- so as to function as the main pillar for driving forward the economy to sustainable growth on par with international counterparts” [From a January 14, 2013 speech by Vorapol Socratyanurak, Secretary-General of the Securities and Exchange Commission, Thailand]

On November 26, 2008, as the full scope of the damage done by one of the largest cases of fraud in the history of Thailand’s Securities and Exchange Commission came to light, Malinee Srisawat, the young recently hired executive officer in the Corporate Governance department of the Securities and Exchange Commission, was both appalled and troubled by the magnitude of the apparent misconduct on the part of the directors of what had been Thailand’s largest independent automobile importer. Wrongdoing on such a scale had never before been seen in the nearly 50-year history of Stock Exchange of Thailand. Especially troubling was the fact that despite a number of regulations in place to prevent such misconduct, the culprits had managed to conceal their wrongdoing from the very financial watchdogs tasked with preventing such financial roguery.

As of December 4, 2008, the shares of SECC Auto Sales and Services Public Company Limited, the culprit company, had fallen by more than 90% from their peak price of 5.45 baht to just 0.22 baht per share, placing shareholders’ equity into negative territory and resulting in the stock being assigned a non-compliance sign, with the threat of imminent delisting of the company from the Stock Exchange of Thailand. Typical of the investors who had lost the entirety of their investments in SECC stock was Manop Jantaweesak, who lost over 2 million baht of his life savings from the trading of SECC stock. Manop’s cataclysmic loss was somewhat typical of the trading in high-risk securities that occurred each year, as thousands of Thai retail investors in pursuit of a quick baht, engaged in the buying and selling of high-risk securities on the Stock Exchange of Thailand. In addition, it was a particularly potent example of how fraudulent activity by a company’s management could severely financially damage some investors, and ruin thousands of others. In fact, it was not unusual for many retail investors – who

ultimately bore the costs of such managerial improprieties and misconduct -- to lose their *entire* accumulation of savings, thereby rendering them essentially destitute.

“How can we encourage the firms to take the necessary procedures to ensure that this kind of misbehaving by management will not happen again?” wondered Malinee, whose SEC duties included the inspection and the detection of fraudulent activities by listed firms. Despite numerous regulations and the promulgation of “best practices” in the realm of good governance set forth by regulatory bodies, misconduct of management was still a vexing problem that arose from time to time. *“Do we need to revise how we communicate good corporate governance to these firms?”* Whatever her analysis yielded, her responsibilities included communicating the Commission’s finds to other regulatory agencies, a step that might trigger the enhancement of regulation and/or the augmentation of the firms’ operational risk management.

Overview of the Car Retailing Industry

Excluding strictly hire purchase establishments, the car dealing industry in Thailand could be categorized as consisting of two major categories: authorized dealers and independent importers. Authorized dealers were establishments that had been appointed by individual car manufacturers to distribute the manufacturer’s particular brand(s) of vehicles. In 2007, there were approximately thirty authorized dealers in Thailand. Collectively, their product lines covered most of the major Japanese and European brands of automobiles, although not all dealerships for a particular automobile manufacturer carried all makes and models of a manufacturer’s total product line of cars, trucks, SUVs, etc. Further, some dealerships had agreements with more than one automobile manufacturer and were thus authorized to carry the product lines of two (rarely, three) different manufacturers. These few dealerships were nearly always a reflection of a strategic alliance between two different “parent company” manufacturers who had agreed to combine resources or forces in order to be more competitive in a particular defined market or product segment. The Ford-Mazda alliance was a relatively recent case in point.

On the other hand, the independent importers were not authorized dealers, but rather independent operators who, on what might be described as a “freelance” basis, imported various brand vehicles and models, in

particular those vehicle makes and models not already being distributed by the authorized dealers. This required both dealing with the car manufacturers or dealers abroad and then interacting with the relevant department or authorities in Thailand in order to import and register the cars to be used in the country. There were only approximately ten independent importers in 2007, most of which had only one showroom and offered a very limited array of models. The competitive advantage of this segment of the car retailing industry was believed to lie in its ability to customize its orders to the customers' expectations. That is, firms in this segment of the business could more easily than the authorized dealers provide customers with not just the brand make or model, but also the exact options and accessories that each individual customer requested, and for which the particular customer was willing to pay a premium price. In this sense, they represented a *niche* seller, offering a more customized, almost made-to-order, product line for a niche buyer base comprised largely of upper-middle class and upper-income individuals.

In recent years, a number of factors and conditions had exerted some influence, albeit uneven, on the overall car retailing industry. First, during final quarter of 2004, the government restructured the levels of tax levied on automobiles, to become effective in 2005. These changes had both positive and negative impacts on many independent importers. Essentially, the government increased the tax rate on high engine-displacement for off-road passenger vehicles, and decreased the tax rate on energy-saving passenger vehicles with under 3,000 cc engines. These changes negatively impacted independent importers (some more than others) because they were major sellers of the former type of vehicles, but not particularly strong in the energy-saving vehicles segment. Moreover, the revised taxation scheme prompted many customers to shift their planned purchases from 2005 to 2004 in order to avoid the announced increased tax on off-road vehicles planned for 2005, making sales environment in 2005 more difficult than it might have been otherwise.

Second, a convergence of factors during 2006-07 had led to an economic slowdown that placed the industry under great stress. Contributing factors had been dramatic and sudden rises in oil prices, as well as the uncertain political environment that was precipitated by the 2006 coup d'état and its aftermath. Together, they put a damper on both consumer and investor confidence. This added to the challenges faced by car dealers

and importers. In addition, the substantial rise in bad debt problems encountered by the hire purchase industry impacted car dealers in particular, as most business establishments reliant on credit-financed consumer buying found themselves obliged to apply stricter standards for credit approval, thereby depressing demand. Partially, offsetting these largely negative environmental conditions was the concomitant spur in demand for energy-saving automobiles such as small-engine and hybrid cars.

Through it all, the independent importers had striven to survive and prosper through their advantage of being able to utilize their expertise to import cars that matched customers' demand and, also, their focus on quality and prompt services aligned to market changes. In this regard, long-established SECC, as the leading imported car seller, enjoyed a competitive advantage and was able to maintain its market share due primarily to its acknowledged expertise and experience in the market and high quality of service.

Background of SECC Auto Sales and Services PCL (SECC)

The SECC was co-founded in 1991 by three entrepreneurially inclined individuals – i.e., Sompong Witthayaraksan, Phaibul Suksuthamwong, and Somchai Sriphayak. The three men brought with them different entrepreneurial experiences. Sompong, for example, came from a family with a business entrepreneurship background, although he himself had a background as a car salesperson. The essence of their business plan -- the importation of luxury cars for resale to wealthy individuals – was at the time relatively new to Thailand because prior to 1991, the Thai government had imposed a ban and restrictions on automotive imports in the bid to protect the local automotive industry. However, in 1991, the market restrictions were eased. For example, the ban on imports of cars with engine capacity under 2.3 liters was dropped, and tariffs were lightened.

Although in time several imitators entered the business, at the time of the liberalization there were approximately ten large automotive importers and several other independent importers. Following market liberalization and the lifting of the automotive imports ban on foreign cars, the imported-car industry began to grow at a significantly higher rate due to the resulting lower prices. As shown in the Table below, the value of cars

imported into Thailand increased from 15,458 million in 1991 to 40,594 million in 1993.

Table 1: Value of Automotive Import during 1991 to 1997

Year	Vehicle Import Value (in million baht)	Growth (%)
1991	15,458	23
1992	29,400	90
1993	40,594	38
1994	43,802	8
1995	44,798	2
1996	37,364	-17
1997	18,524	-50

Source: Department of Trade Negotiations, Ministry of Commerce

Thus, the easing of restrictions had facilitated the emergence of a new business opportunity for those who were interested in offering additional choices to that select group of automobile consumers who wished to go beyond locally made vehicle choices and who could afford the wider array of near-customized choices that would soon become available. SECC was founded with the explicit purpose of satisfying this demand. Driven by the vision of the founders, the company began operations with a small complement of fifteen employees, registered capital of 3 million baht (approximately USD 100,000), and a single small car showroom in the Rama Nine district of Bangkok. The new importer quickly gained substantial popularity among the wealthy individuals in and around the nation's capital city. For the first time, Thai buyers with the financial means were no longer restricted to the automobile brands offered by authorized dealers, but could, through SECC, buy nearly *any* brand and model of automobile that he or she desired.

SECC's Competitive Strategy

As the years passed, SECC, propelled by management's vision and the employees' strong dedication, grew continuously and successfully, and became the leading car importer in Thailand. By 2007, the firm had expanded to six branches, along with service agreements with two authorized automobile dealers. Through its multiple branch locations, the firm imported and sold

the major Japanese and European brands, such as high-end Toyota, Honda, Mazda, Nissan, Volkswagen, Mercedes Benz and Porsche automobiles. The cars that the Company sold could be divided into five categories, as shown below:

- 1) Sport cars (e.g., Toyota MR-S, Mazda RX8, Nissan Skyline, and Mercedes Benz CLK/SL);
- 2) Sedans & Coupes (e.g., Toyota Crown, and Benz Models C, E and S);
- 3) Multi Purpose Vehicles (e.g., Toyota Granvia, Alphard, Estima and Honda Odyssey);
- 4) Sport Utility Vehicle (e.g., Toyota Harrier and Cygnus); and,
- 5) Others, depending on customers' demand (e.g., armored cars, camping vans, and minibuses).

SECC's competitive strategy had its core a commitment to fulfill the full array of needs of all customers, thereby seeking to differentiate itself from its competitors in the independent importer segment of the market. Among other requirements, this entailed adjusting its car stock from time to time in accordance with changes in demand in the market. The firm also strove to select makes and models that came with standard options and accessories such Global Positioning Systems, high-end Entertainment systems, and Night Vision, etc. that distinguished them from other imports. In addition, in its quest to ensure maximal fulfillment of customers' various needs, SECC also undertook, upon customer request, to supply and install customized options and accessories (e.g., DVD players, customized wheels, etc.) using genuine parts available from the particular automobile manufacturer. Occasionally, the firm also undertook to supply special-ordered cars to select customers who requested them.

In addition to these automobile import and customization services, SECC offered two other services that effectively made it a "full-service" provider.

Maintenance and Repair

SECC offered its customers maintenance and repair services through its professionally trained service advisors and of technicians who were equipped to perform problem analysis, maintenance, and repair services, regardless of the brand make or model. These "one-stop" maintenance and repair services, including major overhauls requiring special equipment

and professional mechanics, could be accessed at each of the six branches, and later at a newly appointed authorized service center in Petchburi province. To facilitate this, the company maintained a comprehensive stock of spare parts, with an emphasis on those that were regularly used.

Car Body Repair and Body Paint

Rounding out the firm's "one-stop" automobile services strategy were facilities at each of the six branches for car body repair and body paint work. In order to reduce waiting time for customers, SECC's automobile paint and body facilities, like their counterparts on the maintenance and repair side of the branches, maintained a small inventory of parts, consisting in the mainly of *regularly* used parts. To build confidence and loyalty, it was SECC's policy to guarantee its car body repair and paint work.

As the SECC gained increasing popularity among the rich and the famous, its business lines continued to expand. By the time of its restructuring in 2004, the firm had grown to encompass 13 different subsidiaries which were mostly responsible for imported car sales in different geographical areas. It would later add another business line when, the subsidiary, CNG Hybrid Vehicle Co., Ltd., was created (2008) to spearhead SECC's expanded focus on the importation and distribution of hybrid vehicles. This new subsidiary also installed NGV and LPG equipment and hybrid CNG (Compressed Natural Gas) systems; handled after-sale services; and, distributed equipment used with NGV, LPG and Hybrid CNG systems.

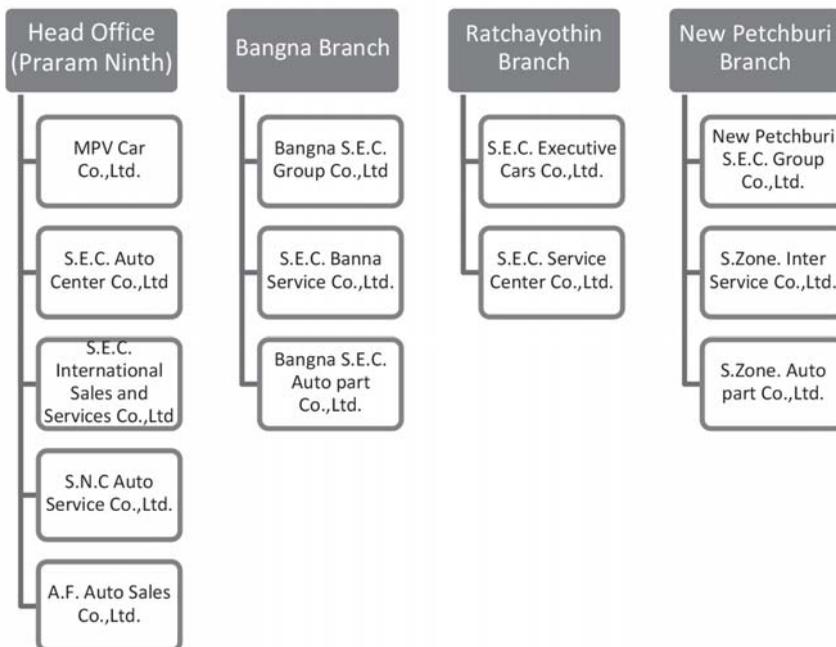
SECC's Structural Arrangements

For the first thirteen years of operations, the SECC had been organized along divisionalized lines, with sale units reporting to the head office and overseeing one production line and three geographical units. (*See subsidiary and shareholding structure below.*)

Table 2: Subsidiaries within S.E.C. Auto Sales and Services prior to the 2004 Restructuring

Companies	Year of Registration
A.F. Auto Sales Co., Ltd.	1993
S.N.C Auto Service Co., Ltd.	1993
Bangna S.E.C. Group Co., Ltd.	1998
S.E.C. Banna Service Co., Ltd.	1998
Bangna S.E.C. Auto part Co., Ltd.	1998
S.Zone. Inter Service Co., Ltd.	2000
S.Zone. Auto part Co., Ltd.	2000
S.E.C. Auto Center Co., Ltd.	2001
S.E.C. International Sales and Services Co., Ltd	2001
MPV Cars Co., Ltd.	2002
S.E.C. Executive Cars Co., Ltd.	2003
S.E.C. Service Center Co., Ltd.	2003
New Petchburi S.E.C. Group Co., Ltd.	2003

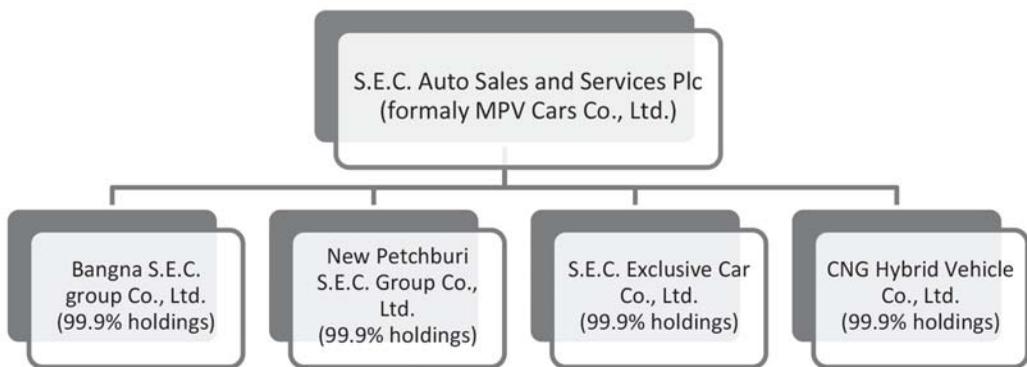
Source: S.E.C. Auto Sales and Services Plc, Form 56-1, 2008



Source: S.E.C. Auto Sales and Services Plc, Form 56-1, 2008

Figure 1: Subsidiaries and Organizational Structure of S.E.C. Auto Sales and Services prior to the 2004 Restructuring

This revised structure carried the firm through its expansion into the 13 subsidiaries that existed prior to the major structural realignment of 2004. By that point, management had felt that the initial structure needed streamlining because it bred too much inefficiency and proved inadequate to the task of providing for the effective coordination of the fast-growing, multi-branch business. Hence, it was decided to streamline the structure, with a reduction of the number of groups from 13 to four subsidiaries plus the parent company, and with each of the four new groups responsible for the operation of one branch, as shown below.



Source: S.E.C. Auto Sales and Services Plc, Form 56-1, 2008

Figure 2: New Organizational Structure of S.E.C. Auto Sales and Services after the 2004 Restructuring

An important additional aspect of the 2004 restructuring was a newly formed MPV Cars Co., Ltd. that became the parent company of the S.E.C. Group, (whose name was later changed to S.E.C. Auto Sales and Services Plc following the listing on the Exchange), with Baht 300,000,000 registered capital and with ownership of 99.99% of paid up capital in 3 subsidiaries – i.e., Bang-na S.E.C Group Co., Ltd. (paid up capital of Baht 20,000,000), S.E.C. Exclusive Car Co., Ltd. (paid up capital of Baht 5,000,000), and New Petchburi S.E.C. Group Co., Ltd. (paid up capital of Baht 30,000,000).

Nevertheless, the extent to which the 2004 restructuring yielded improved financial results was debatable. As shown in Table 3 below, the consolidated financial results for the first three years of the new structure revealed mixed results with the proportion of revenues contributed by sales, services, and “other” moving up both up and down, but ending with 2007 total revenue being essentially the same as in 2005.

Table 3: Revenue Structure of Company and Subsidiaries

Revenue (Unit: Million Baht)	Consolidated Financial Statement Year 2007		Consolidated Financial Statement Year 2006		Consolidated Financial Statement Year 2005	
	Amount	%	Amount	%	Amount	%
Sales revenue	2,345.20	93.53	2,741.94	94.85	2,382.69	95.09
Services revenue	131.88	5.26	108.70	3.76	95.01	3.79
Other revenue	30.33	1.21	40.25	1.39	28.16	1.12
Total revenue	2,507.41	100.00	2,890.89	100.00	2,505.85	100.00

Source: S.E.C. Auto Sales and Services Plc, Annual Report 2007

Not long after the 2004 restructuring, SECC had appointed Finanza Advisory firm to assist it in the preparations and procedures required to become a listed company. In November 2005, after several months of “due diligence,” MPV Cars Co., Ltd. was converted from a company limited to a public company limited. It then changed its name to “S.E.C. Auto Sales and Services PLC”; changed the par value from Baht 100 to Baht 1 per share; and, increased its registered capital to 400 million baht. During May 9-11, 2006, the Company launched an Initial Public Offering of 100 million out of its newly issued shares. Shares of the newly listed firm commenced trading on the SET under the symbol of “SECC” on May 18, 2006. As of May 8, 2007, the firm’s major shareholders were as shown in Table 4 below:

Table 4: S.E.C. Auto Sales and Services Public Company Limited Major Shareholders as of May 8, 2007

Name	No. of Shares (shares)	% of paid up capital
1. Sompong Witthayaraksan	114,000,000	28.50
2. Thitiporn Rojanaphruek	18,000,000	4.51
3. Siritat Rojanaphruek	14,250,000	3.56
4. Phaibul Suksuthamwong	28,500,000	7.13
5. Somchai Sriphayak	22,500,000	5.63
6. Thitiporn Mekjit	19,150,000	4.79
7. Nittaya Laowakul	18,986,300	4.74
8. Mayuree Suksriwong	16,817,000	4.21
9. Wilai Phanwongklom	13,575,300	3.39
10. Pathomphob Chuenphanitchakij	9,400,000	2.35
11. Anonchai Veeraprawat	8,000,000	2.00

Source: S.E.C. Auto Sales and Services Plc, Annual Report 2007

The Beginning of Scandal

The bright prospects that had accompanied SECC's listing and initiation of trading began unraveling not long thereafter. The share price of SECC started at 3 baht per share, and remained in the mundane range of 2 to 3 baht per share for almost two years due partly at least to the global economic slump that had set in shortly after the listing. Indeed, share prices on many bourses around the world, not excepting Thailand, were off from their highs of a few years earlier. SECC shares might well have continued along their unexciting path and remained in a narrow trading range, but for the company's surprise announcement in September 5, 2008 that the firm was all set to win the bid on the government's NGV bus project. With the worth of the project valued at more than 62,600 billion baht for the 4,000 buses that SECC was to procure for the government, the announcement was well received by the investing public. Interest in SECC stock immediately and sharply increased. At the same time, the firm also announced its intention to set aside funding out of the upcoming 1.2 billion baht additional stock offering that was to be made through "Right Offering"¹ (RO) and "Private Placement"² (PP) in order to finance the procurement deal. Sompang himself personally took part in the task of rounding up prospective investors for the RO and PP by going through his list of wealthy, high net worth investors -- among whom were a number of business owners, government officials and even politicians -- and inviting them to participate in the rosy future for SECC that was being predicted.

The next big event in the young firm's history as a listed company took place on January 11, 2007, when the firm held an Extraordinary General Meeting of Shareholders, at which time shareholders approved the proposed offering of 100,000,000 units of cost-free warrants to existing shareholders to purchase new ordinary shares of the firm to ("Warrant No. 1") in proportion to their shareholding in the firm. In addition, shareholders also approved warrants to purchase 20,000,000 units of new ordinary shares of the firm for distribution to directors, executives, and employees of the firm and its subsidiaries ("Warrant-ESOP") without cost. In May, 2007, the company allocated the warrant no. 1 to the existing shareholders of the firm and the ESOP-warrant to the directors, executives, and employees of the firm and its subsidiaries. To all outward appearances, all seemed well.

Alas, less than two years later, on Tuesday morning, November 25, 2008, a rumor began circulating in the market that Sompong had disappeared from Thailand and had probably fled abroad. This news precipitated a pronounced slump of 30 percent in the price of SECC stock price, which had already been declining since the previous day. This prompted the Stock Exchange of Thailand to take the drastic action of issuing a “Notice Pending” (NP) sign over SECC stock. Following the “Suspension” (SP) announcement, the SECC stock price again took a sharp 29.13 percent dive to 0.73 baht per share on November 27, 2008. This constituted a decline of 0.30 baht per share from the closing price of 1.03 baht per share on the day of the SP announcement. (See Table 5 below for a list of other related events.)

Table 5: Closing Prices of SECC Stock during November 25-27, 2008

Date	Closing Price of SECC Stock	Major Event
November 25 th 2008	1.47 baht per share	Rumor of the disappearance of Sompong
November 26 th 2008	1.03 baht per share	Stock Exchange of Thailand issued “Notice Pending” (NP) on SECC stock
November 27 th 2008	0.73 baht per share	Phaibul Suksuthamwong, Managing Director of SECC announced that the disappearance of the chairman will not affect the business

Source: infoquest: <http://www.ryt9.com/s/iq05/478445>

Further, according to broker sources, there were market rumors that not only had SECC’s chairman disappeared, but also that Sompong’s disappearance had been precipitated by a personal debt problem arising from his inability to repay a loan that had been collateralized with SECC stock. Falling stock prices had triggered demands for the repayment of the loan, which he was unable to do, according to the rumors. It was further rumored that he had also siphoned off and absconded with over 250 million baht of SECC’s funds.

As these rumors accumulated, they spread dark clouds over the fortune of SECC stock, triggering the Securities and Exchange Commission, the securities watchdog agency, to step in and investigate. Soon thereafter,

the Commission came forth with allegations of systematic wrongdoing by Sompong, as well as his two partners in the business. First and foremost was the allegation that Sompong had used the vehicle registrations of 25 cars to guarantee his personal debts. Some of the cars had been sold to SECC's customers, who thereafter found that they could not register their cars at the Land Transport Department because they were without the necessary vehicle documents. The Commission also alleged that Sompong had embezzled 42 million baht from SECC's Private Placement share offering bank account. Sompong's associates, Somchai Sriphayak (his business partner) and Nipaporn Khomkla (SECC's assistant managing director for accounting and finance) were deemed by the Commission to have been accomplices in the embezzlement case. Moreover, Sompong and Nipaporn were also accused of having jointly falsified financial statements to deceive shareholders and others by fabricating auto sales documents worth 30 million baht and showing liabilities 30 million baht lower than the actual amount. Further, continued the Commission's report, Somchai might have stolen 30.00 million baht from SECC's bank accounts, as the deposits had disappeared. Two additional SECC executives – i.e., Kornwivat Wattanathamwong, managing director and also director of SECC (who had recently changed his name to Phaibul Suksuthamwong), and Muthita Nilsawat, SECC's assistant managing director for sales and public relations – were accused of malfeasance, as they had signed cheques to Sompong without verifying the transactions and caused the company to suffer losses. In late 2012, this preliminary batch of findings prompted the Securities and Exchange Commission to file a complaint with the Department of Special Investigation against Sompong for fraud and falsification of auto sales documents.

As time went on, the Commission's initial complaint against Sompong would soon become merely the beginning. Soon after the frauds were discovered, the securities watchdog also ordered SECC to appoint an independent auditor to conduct a special investigation into the internal operations of the firm, and then report back its findings. The Commission's subsequent charging of Sompong and accomplices with the breaching of several provisions of the Securities and Exchange Act, were as summarized below:

Embezzlement and Improperly Authorized Loans

Based on the report of the independent auditor, the securities watchdog found evidence that Sompong Witthayaraksan (the former SECC Chairman),

Somchai Sripayak (an authorized SECC director), and Suriya Lapwisuthisin (a politician, businessman and a former Deputy Minister of Commerce) had jointly embezzled 245.00 million baht from SECC by approving SECC Holding's request to extend loans to four persons who were not aware of the loans. According to the audit report, the parent company, SECC, did not utilize the financial statements of the subsidiary, S.E.C.C. Holding Co., Ltd., in the preparation of the consolidated financial statements, thus concealing the wrongdoing. Moreover, in the preparation of the consolidated financial statements, SECC did not gather all of the relevant information from SECC management. This action did not comply with generally accepted accounting principles. Short-term loans to other persons and other companies – initially totaling 220.0 million baht, but augmented by another 25.00 baht loan after September 30, 2008, for a grand total of 245.00 million baht – were found to have been authorized by the parent company's management but which the auditor believed should have been pursuant to authorization by the particular subsidiaries' own boards of directors.

Embezzlement of \$30 Million Baht from Subsidiary Company's Account

Through the SECC staff, investigators of the independent auditor found that Somchai Sripayak, authorized SECC director, had withdrawn 30.00 million baht from the SECC's subsidiary saving account -- mysteriously and without explanation. The securities watchdog believed that the missing funds were evidence of a bid to steal money from the company. Consequently, the securities watchdog averred that the company person who was authorized to conduct saving account transaction should be held accountable and charged with breaches of Clauses 307, 308, 311, and 313 of the Securities and Exchange Act.

Embezzlement of \$42 Million Baht from SECC's Share Offering

With the independent auditor's report in hand, the securities watchdog further accused Sompong Witthayaraksan of embezzling 42.00 million baht from SECC's Private Placement share offering bank account. Somchai Sripayak and Nipaporn Khomkla, assistant managing director for accounting and finance, were deemed accomplices in the case. Moreover, the independent audit found insufficient documentation regarding the withdrawal of a total of 42.00 million baht from bank accounts containing

the fees from shares subscription. The firm had no record of such a transaction; neither could the relevant staffs of the firm remember how the transaction had occurred. The securities watchdog's interview sessions with the relevant staffs of the firm surfaced the revelation that the accounts were for shares subscription by shareholders and that there had been cash withdrawal from these accounts without the money having ever been returned to the particular shareholders. The firm's management had neither explanation nor any documents related to such transactions.

Use of Vehicle Registrations to Guarantee Personal Debt

From the independent auditor's exhaustive review of the firm's books and accounts, additional suspicions of wrongdoing and fraud were confirmed. It was found that Sompong had allegedly used the vehicle registrations of 25 cars to guarantee his personal debts. Some of the cars were then sold to SECC's customers, who were then unable to their cars at the Land Transport Department. The audit report confirmed the disappearance of vehicle registration documents for cars that had been sold but not yet registered. Some of the cars, the audit confirmed, had been used as pledge guarantees against loan credit lines with some 8 different banks and finance institutes, thus making registration impossible.

Fabrication of Auto Sales Documents Worth 30 Million Baht

Based on the findings of the independent auditors, the Commission also charged Sompong and Nipaporn with jointly falsifying financial statements to deceive shareholders and others by fabricating auto sales documents worth 30 million baht and showing liabilities 30 million baht lower than the actual amount. The auditor reported that contrary to documents claiming sales of 467 cars with a value at 1,425.67 million baht in 2008, the actual numbers were 117 cars with a value of 361.00 million baht. Further, the investigation found instances where the numbers on automobile tanks shown on the merchandise delivery form/tax invoice did not match with numbers on automobile tanks in the inventory report as of December 31, 2007; and, the vehicle sales report during 2008 showed 77 vehicles (total value of 247.20 million baht) as having been sold to the customers but which had not been registered. Moreover, there were 30 vehicles (total value of 85.14 million baht) in which the document supporting automotive sales (i.e., receipt/tax invoice, automobile delivery form, customer registration form, vehicle

release form) did not match with the report of SECC's automotive sales.

Malfeasance of Company Management

From the auditor's finding that Kornwiwat Wattanathamwong, managing director and director of SECC Holding, (who had recently changed his name to Phaibul Suksuthamwong), and Muthita Nilsawat, SECC's assistant managing director for sales and public relations, had signed cheques to Sompong without verifying the underlying transactions (thereby causing the firm to suffer losses), the securities watchdog leveled an additional charge of malfeasance against both persons.

Failure of Operational Risk Management

On December 2008, the special audit found that the embattled firm had suffered damages of 1.36 billion baht, or 60 per cent of its third-quarter assets, after the preliminary investigation and found that an additional 484 cars were missing from the company's warehouse. From the test of internal control system of the firm, the audit identified multiple defects that were subsequently described as constituting "substantial materiality" to the financial statements with regard to the automobile purchasing system and debt repayment, the automobile selling system and debt repayment receipts, automobile registration system for customers, and a failure of compliance with the manual of procedures. These were illustrated by the following irregularities:

1. *Lack of Complete Information Concerning the Firm's Internal Control System.*

Previous management and staffs within the accounting department of the firm refused to answer questions aimed at assessing the firm's internal control and procedures. Moreover, the special auditors were unable to obtain concrete answers due to the resignations of several persons of interest among previous management and staffs. Such explanations as were obtained were mainly of the nature of assertions that they "did not fully understand" the firm's internal controls and procedures. However, according to generally accepted auditing standards, the management and the personnel within a firm's accounting department were obliged to provide information regarding the firm's internal control and procedures to

independent auditors, so that the auditors could use such information to assess the quality and the integrity of the firm's internal control system.

2. *Failure to Keep Adequate Records and Documentation – Automobile Purchasing.*

Not only did the firm not have any system for the selection of distributors or suppliers, the documentation concerning automobile purchasing and debt repayment was found to be insufficient and incomplete. This was exemplified by the finding that the recording of documentation for one transaction had different related documents. There was no segregation of duties: For example, the person who approved an automotive purchasing request transaction could be the same person who prepared the purchasing request form. Moreover, the purchasing procedure for automobiles could be processed solely by one manager, while the more normal process would have entailed authorization by a committee.

The audit also found that there was more than one form of automobile receipt, while in normal business procedure; there should have been only a single form. Ordinarily, a firm would prepare copies of automobile receipts if it wanted to maintain an audit trail and implement internal controls. The explanation offered by the firm was that its staffs had utilized different types of automotive receipt forms because when previous responsible staffs had resigned, the replacement staffs did not take into consideration the existence of the previous forms. This resulted in the duplication of the same type of form. The auditors noted that the signatures on automobile receipt forms were also different from the ones for which the auditors had previously received an explanation. In light of the lack of information with which they were confronted, the auditors noted that they were unable to assess whether the firm had *any* risk management or control procedures whatsoever:

. . . [T]he internal auditor found that many staffs from the departments involving in the different areas of the operations had resigned. An audit process found that the persons who were responsible for automotive receipt

*and provided their signatures in merchandise delivery form / purchasing tax invoices, accounting staffs that are responsible for preparation of inventory control accounting in the accounting department and other staffs involved in previous business transactions had resigned before I enter[ed] the premises to evaluate the firm. **Therefore at this point, I do not have sufficient information with respect to performance of such parts of the operation of the firm.** Although the firm's management had provided contact details of such persons, nevertheless when I tried to contact, there was no answer. **In addition, many of the document[s] in relation to vehicle sales transactions [were] missing in which I was unable to fully assess the firm's risk management or control procedures.** The relevant staffs explained that most documents were located at Department of Special Cases Investigation, and some were missing. [As noted by Ampol Chamnongwat, Authorized Auditor No. 4663, in the Independent Auditor's Report of S.E.C. Auto Sales and Services Plc.]*

3. Failure to Keep Adequate Records and Documentation – Automobile Sales.

The auditors noted that they were unable to find complete information and records related to the sale of automobiles from the firm's inventory. It was found that the documents were incomplete to verify vehicle sale transactions, as well as any debt repayment on the vehicles. As a result, the auditors were unable to assess the system in great detail. Moreover, they noted that similar to the system of automobile purchasing and debt repayment, there was no segregation of accounting duties; and, there were unexplained discrepancies in the details of the transactions and documentation. In this area, here again the main explanations offered by the Company was that the responsible management or staffs had already resigned and that some documentation had either been lost or was in the possession of the Department of Special Cases Investigation. Hence, the auditors concluded that they were unable to assess the system.

4. *An Inadequate System for Registering Automobiles.*

The system for registering automobiles was found to be inadequate. The auditors found no evidence of documents to support the import of vehicles – documents that were also needed for purposes of vehicle registration with the Department of Land Transport. The proffered Company explanation for this lack of documentation was that these records had been kept by one of the directors. The firm did not have any system in place to keep the record of vehicle registration up to date. In addition, the documentation for vehicle registration involved just the one individual who both received the documentation and also performed the registration of vehicles on behalf of customers.

The Quest for Solutions: More Regulations or What?

Shaking her head at the thought of the magnitude of the damage perpetrated by fraud and misappropriation of assets that had occurred at SECC, Malinee sighed as she pondered the question of how good corporate governance and operational risk management, along with regulatory oversight, could be strengthened. Certainly, incidents such as the massive misconduct recently surfaced at SECC called into question the practical significance and workability of the fundamental concept underpinning listed companies, i.e., the notion that they should be *the most transparent* of all companies because of a number of requirements pertaining to their being listed in the first place. More specifically, companies that wished to be listed had to satisfy a number of criteria aimed at ensuring that the individual investor was being protected. Among these were requirements for the demonstrating transparency along many dimensions.

In addition, to these pre-listing requirements, companies that succeeded in becoming listed were required to keep in place ongoing procedures to ensure that they remained transparent at all times. These ongoing procedures often included stringent reporting requirements and public disclosure of the firms' financial information and performance. Further, many of the financial watchdogs also required additional procedures to ensure that the management of listed companies, who were ultimately responsible for the performance of these firms, was appropriate and in the best of the owners (i.e., stockholders). Management were supposed to adhere to, and be restricted by, the principle-agent theory by which their actions were to be governed by the objective of doing what was best for their

stockholders. Moreover, in the effort to further assure transparency and the underscore the responsibility of individual management of listed firms, the financial regulators had clearly spelt out the concepts of corporate governance and corporate responsibility. (See Exhibit 1: List of the relevant regulatory bodies and summaries of their missions and responsibilities, and Exhibit 2: Summary of the concepts of corporate governance and corporate social responsibility as applied to listed companies.)

As she further reflected on the many laws, regulations, and regulatory agencies that had been put in place to ensure the integrity of the financial market, Malinee could not help but wonder whether laws, regulations, and the like had perhaps reached the limits of what they could reasonably be expected to accomplish on their own and that additional expansion and “tweaking” of them was likely to yield diminishing returns. More than anything, she firmly told herself, the SECC scandal had illustrated the failure of good corporate governance and internal control. It had also highlighted the fact that regulation, although a necessary condition, but was in the final analysis an *insufficient* condition to prevent the many forms of misconduct that could occur in listed companies. Efforts had to be made from both sides – i.e., the regulator and those being regulated.

Operational risk management, it seemed to her, was the weak link in the chain that needed focused attention. (See Exhibit 3: An exposition of Elements and workings of Operational Risk Management.) To be sure, the concepts of good corporate governance and social responsibility could provide guidelines for how the management *should* behave. However, it seemed to Malinee that when all else failed, operational risk management – e.g., operational guidelines and procedures, transaction verification systems, and internal audits -- was the final defense to thwart any inclination toward financial wrongdoing by anyone in the firm, including the management

The case of SECC had certainly damaged regulatory objectives, as well as called into question whether the regulators were up to the task. In addition, it had damaged the reputation of listed companies -- and their management, employees, and stockholders – and, most importantly, the integrity of the market. In recent years there had been the repeated incidences of the destruction and near-destruction of equity prices due to this kind of fraudulent activity and misconduct by the management of listed companies, in both the international and Thai contexts. It was therefore

imperative Malinee believed, that appropriate measures be designed and implemented to forestall a future recurrence of such fraudulent activity. If these could be devised and implemented, then the SECC fiasco, unfortunate though it was, would have been instrumental in bringing out the full magnitude of the problem, thereby focusing attention on what was required to ensure the integrity of Thailand's financial markets.

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Endnotes

- ¹ An issue of rights to a company's existing shareholders that entitles them to buy additional shares directly from the company in proportion to their existing holdings, within a fixed time period. In a rights offering, the subscription price at which each share may be purchased is generally at a discount to the current market price. Rights are often transferable, allowing the holder to sell them on the open market.
- ² Private Placement refers to raising capital through the sale of securities to a relatively small number of select investors, such as large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market. Since a private placement is offered to a few, selected individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and the need for a prospectus is waived. Further, because the placements are private rather than public, the average investor is only made aware of the placement after it has occurred.

Exhibit 1: List of the Relevant Regulatory Bodies and Summaries of Their Missions and Responsibilities

Agency	Responsibilities under the Law
Securities and Exchange Commission (SEC)	SEC is the major capital market watchdog which performs the functions of the capital market supervisory agency. SEC supervises and provides the function to facilitate the development of the capital market as well as initiate legal framework and enforcement of the Securities and Exchange Act.
Stock Exchange of Thailand (SET)	SET is the national stock exchange of Thailand which is set up under the Securities Exchange of Thailand. SET serves as a center for the trading of listed securities, and provides the essential systems needed to facilitate securities trading, as well as to undertake any business relating to the Securities Exchange, such as a clearing house, securities depository, securities registrar, and similar activities.
The National Corporate Governance Committee (NCGC)	To implement good governance quickly, prudently and efficiently, the NCGC has appointed 6 sub-committees: (1) Law Amendment and Enforcement; (2) Accounting Standard; (3) Corporate Governance of Listed Companies; (4) Corporate Governance of Financial Institutions; (5) Corporate Governance of Securities Companies and (6) Education and Public Relations
The Thai Institute of Directors Association (IOD)	A not-for-profit, membership organization which is dedicated to improving director professionalism and corporate governance in Thailand. The IOD had helped develop professional directorship standards and provided best practice guidelines for company directors' effective performance of their duties in line with international standards.
Certified Accountants and Auditors of Thailand (CAAT)	Adopted by the Board of Supervision of Auditing Practices in the Ministry of Commerce. CAAT certifies and approves those who are in the profession as accountants and auditors.

Sources: www.sec.or.th; www.set.or.th; and www.thai-iod.com

Exhibit 2: Summary of the Concepts of Corporate Governance and Corporate Social Responsibility as Applied to Listed Companies

Corporate Governance Elements	Specific Obligations vis-a-vis Corporate Governance
Conduct of Directors	Directors should perform their duties following principles of integrity, transparency and fairness. In addition, some responsibilities of directors are legally enshrined.
Roles and Responsibilities of a Board of Directors	The board of directors has powers and duties in managing the business of the company in accordance with the company's business objectives, articles of association, and shareholder resolutions. The fundamental roles of the board of directors fall into two areas: <ul style="list-style-type: none"> • Leadership – determining business directions, goals, policies and strategies • Relations with management – monitoring the performance of management.
Corporate Strategy / Operations	<p>Disclosure of any material information.</p> <p>To have internal control system and risk management by ensuring that the business can maintain efficient operations and performance.</p> <p>To have sufficient policies and procedures for an employee stock option plan (ESOP)</p> <p>To have sufficient policies and procedures for the firm's business transactions, including:</p> <ul style="list-style-type: none"> • The sale and purchase of important assets • Connected transactions • Issuance of securities pursuant to the increase of capital • Takeovers
Rights and Equitable Treatment of Shareholders and Shareholder Meetings	The owners of the business should have rights to participate in decisions concerning fundamental issues and have the right to follow-up, examine and assess the firm's operational results.
The Sale or Purchase of Securities by Directors	The firm should have sufficient policies and procedures concerning any sale or purchase of securities by directors
Submission of Reports on Information Disclosure	The firm is required to be transparent and to have sufficient policies and procedures for the submission of reports and information disclosure to the public and relevant authorities.

Source: *Director's Handbook*, issued with the cooperation of The Securities and Exchange Commission, the Stock Exchange of Thailand, and the Thai Institute of Directors

Exhibit 3: An Exposition of Elements and Workings of Operational Risk Management

Elements of Operational Risk Management	Summary of Responsibilities and Duties
<p>The firm's management has fiduciary duty to ensure Operational Risk Management</p>	<p>The operation or performance of any undertakings is efficient, effective and in line with policies, regulations and corporate strategies, including related laws and rules.</p>
	<p>Corporate properties are taken care of, protected, and are ready for use without any outflow or waste. Moreover, the properties shall be used only for company benefit, and with authorization.</p>
	<p>Financial reports are prepared reliable.</p>
<p>The firm is required to set up a system or review the sufficiency of internal controls in order to ensure that its operational risk will be at an acceptable level. The following are the guidelines in setting up an internal control system.</p>	
<p>Appropriate organization structure</p>	<p>A good organizational structure will be based on a “<i>checks and balances</i>” system. Each of the internal sectors shall have specific duties and responsibilities, with written business operating rules. These structures shall ensure that each transaction has verification procedures with respect to authorization and information entry without causing an overlap in performing any of the functions and work.</p>
<p>Risk assessment approach</p>	<p>Risk assessment shall apply to the entire organization and shall be able to identify which systems have high risk tendencies, the extent to which a given system may damage the company, the probability of risky events occurring, and the extent to which there is sufficient protection.</p>
<p>Provision of a follow-up system</p>	<p>Risk management system shall be provided at least for every system that has a high tendency of risk together with high impact and high probability. The system should have a risk control policy together with an early warning indicator.</p>
<p>On-going Assessments</p>	<p>After setting up the internal control and risk management systems, the firm should regularly go through self-assessment to ensure that they are still efficient and have been revised according to any circumstantial changes</p>
<p>Implementation of Audit Recommendations</p>	<p>If there are comments or inspections relating to mistakes found by the auditor or audit committee, the board shall pay attention to the comments and shall improve and correct them promptly.</p>

Source: *Director's Handbook*, issued with the cooperation of The Securities and Exchange Commission, the Stock Exchange of Thailand, and the Thai Institute of Directors