

ABSTRACT

This thesis aims to study the problems on the use of powers to appoint the directors in the state enterprises including the control of conflict of interest in performing duties of those who hold such offices. The scope of the study is only based on the case of the directors in the state enterprises in the form of limited companies engaging with telecommunication business and have been under the transformation according to the Capital of State Enterprise Act, B.E. 2542 (1999) viz.: TOT Public Company Limited and CAT Telecom Public Company Limited. They have been transformed from Telephone Organization of Thailand and Telecommunication Authority of Thailand . The main reason to transform such state enterprises is to create the active management and to fully compete with the private business operators and to be in line with the change of the technological development.

In this regard, the organization which is important and plays a crucial role for the companies' management is the Board of Directors of the companies because they are the conductors for the companies' operations and have powers and duties to set forth the operational policies and plans of the companies. Moreover, the Managing Director who is the head of management team is also the director of each company. Such Managing Director has power and duty to manage the routine works of the company and to negotiate as well as conclude all contracts on behalf of the company with the third parties. Consequently, due to the aforesaid power and duty, the directors of the companies play a very important role both inside and outside the companies. However, the Ministry of Finance is only the shareholder in both state enterprises in the form of limited companies engaging with telecommunication business. As a result, this is the nature of the "state enterprises" as provided in the law on budget procedures. Therefore, the directors of both companies are simultaneously the directors in the state enterprises and they are under the control of the regulations which are imposed with the directors in the state enterprises.

With regard to the consideration of principles to appoint the directors in the state enterprises in the form of limited companies engaging with telecommunication business, it is focused on the issue in relation with the persons who have power as the appointers and qualifications of persons who shall be appointed as directors of the companies. The main

cause of problems is that although the Capital of State Enterprise Act, B.E. 2542 (1999) prescribes that during the time when the Ministry of Finance has not transferred its shares to the third parties, the opinion of Ministry of Finance concerning the companies shall be deemed as the resolution of the shareholders' meeting and, hence, the Ministry of Finance as the shareholder of all shares in both aforesaid companies shall be the person who has power to directly appoint directors of the companies. However, in practice, it is found that the persons who have power to consider the nomination to be appointed as directors of the companies are the ministers of the particular Ministries (under the case in this study, it means the Ministry of Information and Communication Technology). In other words, when there is reason to select directors of the companies, the minister in each Ministry shall make agreement with the Ministry of Finance and nominate the names of persons whom they think fit to the Selective Committee of the companies and propose such names to the shareholder, the Ministry of Finance, in order to appoint and change the names of directors according to the registration procedures. In doing so, there are several ongoing problems. It always appears that the persons who are appointed as directors of the companies lack the qualifications which are appropriate with the business operations of the companies, but they are appointed for the political repayment. Consequently, the managements of companies fail to achieve their goals. Moreover, the directorship of the state enterprises which are limited companies is closely related to the political group of people. This always brings about the change of directors of the companies together with the political change. It severely affects the business operations of the state enterprises which are limited companies and highly require the activeness. Apart from this, even though the applicable laws impose a number of measures to control the conflict of interest in performing duties of the directors in the state enterprises which are limited companies, it is evident that the enforceable measures are not effective as they should be and there are always loopholes to seek for the personal interest from the use of powers in the particular positions.

The aforesaid problems are not easy to be solved because they have been arisen for a long time. For some cases, it is deemed as the customary practice. This results in the damage to both the State and people who receive the service. It is, therefore, necessary to amend the legal provisions by reducing the roles of the ministers in the particular Ministries to be in an appropriate level in the use of powers to appoint directors in the state enterprises

which are limited companies. The criteria in using powers to supervise by the political group of people should be precisely set forth and the criteria relating to the qualifications of persons who shall be directors should be improved in order to acquire the persons who truly have direct knowledge and competence with the works of the state enterprises. Furthermore, there should be the law to directly control the conflict of interest in performing duties of directors in state enterprises which are limited companies. In this regard, the said law should be prescribed to cover all forms of actions including the conflict of personal and public interest which is arisen at present and to determine the scope of the enforcement in the appropriate level in order that the enforcement of such law creates the most effectiveness and efficiency.