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THAILAND

Newsletter

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Addition of Collateral to Unsecured Debentures After Issuance

Unsecured debentures are common debt instruments for companies to raise funds without the provision of collateral, typically relying on the credit rating of an issuer or the issuer's general creditworthiness. However, there may be circumstances where the issuer seeks to enhance the security of these instruments by adding collateral post-issuance in order to provide further assurance to investors or increasing liquidity in the secondary market.

On 3 November 2023, the Securities and Exchange Commission ("**SEC**") released a clarification paper regarding the addition of collateral to unsecured debentures after the issuance of such debentures. The paper states that the debentures in question must possess specified characteristics, and the issuer of the debentures must carry out the following procedures:

1. Appointment of a debentureholders' representative from the outset

According to the Securities and Exchange Act, when applying for approval to issue and offer secured debentures, a debentureholders' representative must be appointed. This is because role of the debentureholders' representative is crucial for overseeing the collateral, for example, ensuring that the issuer does not undertake any actions that could devalue the collateral, which would result in a decline in value from the stipulated proportion under the terms and conditions of the debentures ("T&C"), or acting on behalf of the debentureholders in enforcing collateral or debt repayment, etc. However, with regard to the process of issuance and offering of debentures, once the SEC has approved the application for issuance and offering of debentures, the issuer is not able to appoint a debentureholders' representative for that series of debentures later. Therefore, collateral can only be added to unsecured debentures if a debentureholders' representative was already appointed at the beginning.

2. Amendment of T&C

The issuer must amend the T&C after adding collateral to the debentures that have been issued. The amendment shall include details of the specification of the additional collateral and obligations and conditions associated with such collateral. In this regard, the debentureholders' representative should be involved in assessing the nature of the collateral conditions, legal enforceability, order of priorities over collateral and sufficiency of information to be disclosed to debentureholders. Additionally, when amending the T&C, the issuer must follow

the procedures specified under the T&C. In the case where the T&C requires that the amendment of the T&C be approved at a debentureholders' meeting, the meeting notice should provide necessary information for informed decision-making. This includes the rationale for the amendment, its impact on or potential effects on debentureholders. The debentureholders' representative should also provide a thorough opinion on the advantages and disadvantages, rationality, and benefits or risks of the proposed resolution at such debentureholders' meeting. This ensures that debentureholders or investors have sufficient information to make decisions.

In addition, the issuer is obliged to notify the SEC and the Thai Bond Market Association the T&C amendment along with relevant details within 15 days from the effective date of such amendment.

For more detailed information in Thai, including the FAQ in relation to the above issue, please visit link [HERE](#)

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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