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THAILAND

Newsletter

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SEC Amendments to the Regulations for Shares Offering through Private Placement (PP)

The Securities and Exchange Commission of Thailand (the "SEC") has amended the regulations for the offering of newly issued shares by listed companies through private placement ("PP"), which will be effective from 1 July 2023¹, with the following key changes.

1. Cancellation of the SEC approval application procedure

According to the new regulations, the offering of newly issued PP shares by a listed company will be considered approved by the SEC due to the removal of the approval application procedure. The issuer still has to comply with other requirements, including disclosure and submission of required information in the shareholders' meeting invitation and requirements for approval by the shareholders' meeting.

2. Requirement for the opinion of the independent financial advisor ("IFA")

The offering of PP shares with one of the following circumstances requires an opinion from the IFA:

- The offer price is lower than the market price;
- The offering of PP shares will result in an investor becoming the shareholder with the highest voting right² in the listed company; or
- The offering of PP shares will cause the earning per share or the control dilution of not less than 25%.

The requirement for the appointment of the IFA above does not apply to the offering of PP shares for the shares remaining from the preferential public offering (PPO) and rights offering (RO).

¹(i) Notification of the Capital Market Supervisory Board No. Tor.Jor. 28/2565 re: Approval for Offering of Newly Issued Share by Listed Company through Private Placement, (ii) Notification of the Capital Market Supervisory Board No. Tor.Jor. 29/2565 re: Particulars of Notice Calling Shareholders' Meeting of Listed Companies to Obtain Approval for Issuance and Offer of Securities for Sale (No. 3), (iii) Notification of the Office of the Securities and Exchange Commission Sor.Jor. 46/2565 re: Calculation of the Offering Price and Determination on the Market Price for the Offering of Newly Issued Shares in Lower Price, and (iv) Notification of the Capital Market Supervisory Board No. Tor.Jor. 31/2565 re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 13); issued on 28 December 2022

²Including the voting rights of such shareholder's related parties and concert parties.



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3. To accommodate the shares remaining from a preferential public offer (PPO)

The new regulations allow the issuer to allocate the shares remaining from a preferential public offering (PPO) to be offered through PP, in addition to the rights offerings (RO), to give flexibility and effectiveness to the fund raising of the issuer.

4. Calculation of the market price

The issuer is required to calculate the market price from the weighted average price as a priority approach. In case there is the fact that the weighted average price cannot be calculated, or there is any ground showing that the weighted average price is not an appropriate approach, the issuer may refer to the book building approach and fair value approach, respectively.

5. Offer period for the offering of PP shares

The offer period under the new regulations must not exceed the following period which can be divided into three cases.

Case	Period		
	From the date that the shareholders' meeting has a resolution to approve the offering of PP shares	From the date that the Board of Directors has a resolution to determine the offer price for each tranche	From the end of the offer period for the offering of newly issued shares to the existing shareholders
1) The shareholders' meeting has a resolution to empower the Board of Directors to determine the offer price which is according to the market price	12 months	Five business days	-
2) The shareholders' meeting has a resolution to specify the offer price	Three months or 12 months in case that the shareholders' meeting has a resolution to empower the Board of Directors to determine the offer price which is according to the market price after the three month period	Five business days in case that the shareholders' meeting has a resolution to empower the Board of Directors to determine the offer price which is according to the market price after the three month period	-
3) The offering of shares remaining from the offering of shares to the existing shareholders	-	-	Three months

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

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.

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