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Newsletter

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Unveiling the Rules: Thai SEC tweaks public offering (PO) regulations for listed companies undergoing rehabilitation proceedings

Introduction

In response to the evolving business landscape and uncertainty of the Thai capital market, some listed companies appear to be on the brink of entering rehabilitation to seek rescue through the mechanism of the Bankruptcy Act. Under this framework, the listed companies will be subject to a rehabilitation plan approved by the creditors' meeting and the Bankruptcy Court. Common rescue strategies often deployed in these rehabilitation plans by distressed businesses involve raising funds or converting debt into equity.

Recently, effective 16 April 2024, the Securities and Exchange Commission ("SEC") has revised its regulations in relation to public offerings (PO) for listed companies undergoing rehabilitation proceedings. These newly issued SEC regulations are designed to facilitate the implementation of such rehabilitation plans by easing certain duties, especially in rescues involving share offerings. Interestingly, it is anticipated that Thai Airways International PCL may be the first rehabilitated listed company to apply these new regulations.

What's new?

The table below provides a summary of key differences resulting from the amendments made by the SEC under the newly issued regulations:

Topic	Previous Scheme	New regulations
Issuance and Offering of Securities	<p>SEC's Approval</p> <p>Subject to further approval from the SEC, the qualifications of the listing company will be reviewed by the SEC based on certain criteria, including, for example:</p> <ul style="list-style-type: none"> No cross shareholding structure; No conflicts of interest between the company and its directors, executives, and major shareholders; and The company is not under the C (Caution) sign or SP (Trading Suspension) sign posted by the Stock Exchange of Thailand (SET). 	<p>Deemed SEC's Approval</p> <p>A rehabilitated company shall be eligible to issue new securities on a deemed approval basis if it complies with the conditions specified by the SEC. Key conditions include, amongst others:</p> <ul style="list-style-type: none"> The company has specified the issuance of securities in the rehabilitation plan; The company's financial statements have been audited by an auditor approved by the SEC; and The company has submitted its financial statements and an annual report on an annual basis pursuant to the SEC regulations prior to the issuance of securities under this new alternative option. <p>Note: The rehabilitated company is still subject to the disclosure requirements in the prospectus and the requirements with regard to filing for the issuance and offering under these new regulations.</p>
Prospectus and Filing	<p>Prospectus and filing forms for Public Offering (PO), i.e., forms 69-1 and 69-PO.</p>	<p>The prospectus and filing forms are the same as the current regulations for listed companies, i.e., the prospectus and filing for a Public Offering (PO), with <i>additional information on the rehabilitation</i>, such as:</p> <ul style="list-style-type: none"> Rationale and plan for rehabilitation; Risks associated with rehabilitation; Progress of the rehabilitation plan; and Obligation(s) that may potentially arise in the future.
Qualifications of Financial Advisor	<p>The qualified financial advisor must be the one who is included in the list of financial advisors approved by the SEC.</p>	<p>An additional qualification now required for the financial advisor of a listed company, specifically a rehabilitated company, is that the financial advisor in charge of the issuance of securities must not be the same individual serving as the financial advisor who is the Plan Administrator for the distressed company.</p>

Topic	Previous Scheme	New regulations
Filing Submission Fee	<p>There is a filing submission fee, which varies depending on the type of securities and the value of the offering, for example:</p> <ul style="list-style-type: none"> • 0.05% of the total value of the offering shares; • 0.08% of the total value of the offering warrants with a term of less than one year; and • 0.03% of the total value of the offering warrants with a term of more than one year. 	<i>Exempt from</i> the filing submission fee

Key Takeaways

In conclusion, the changes aim to facilitate the securities offering process for listed companies undergoing rehabilitation proceedings while ensuring transparency and accountability. The challenge is that listed companies must now meet certain stringent requirements, which involve a thorough review of the qualifications by the SEC. However, the changes also provide some relaxation; companies can now issue new securities on a deemed approval basis if they meet certain SEC criteria.

These changes are expected to encourage more effective business rehabilitation strategies and ultimately contribute to the overall health and stability of the business sector. Given its far-reaching implications, this topic should be noted and closely monitored.

To discuss the legal topics included in this briefing in further detail, please contact the authors listed in the left-hand column.

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