



Chapter 10

CAPITAL MARKETS

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(1) Introduction

A. Relevant Regulations

Thailand's capital markets are fundamentally regulated and monitored by the Ministry of Finance through the Securities and Exchange Commission of Thailand (the "**SEC**"), which is established under the Securities and Exchange Act, B.E. 2535 (1992), as amended, (the "**SEC Act**"). The SEC acts in its capacity as an independent authority in formulating the policies and regulations generally concerning: (i) the development of the capital markets in Thailand for both primary and secondary markets; and (ii) the formulation, maintenance, and standardization of the capital markets in Thailand to ensure that securities are issued and traded in an orderly, fair, transparent, and efficient manner.

B. Regulatory Bodies

The SEC is empowered under the SEC Act to enforce legal actions, including administrative, criminal and civil actions against any violation of securities laws. Typical violations include a breach of insider trading rules or disclosure requirements.

The Stock Exchange of Thailand (the "**SET**") is established under the SEC Act. The SEC mainly regulates and monitors the primary capital markets in which securities are issued, e.g., an initial public offering (the "**IPO**"). While the SET administers and regulates secondary trading where securities are publicly traded including processing listing applications, monitoring trading of listed securities, and regulating the disclosures made by listed companies.

Another significant segment of the financial markets in Thailand is the money market, which is regulated and monitored by the Bank of Thailand (the "**BOT**"). The BOT plays a significant role in fostering financial stability in Thailand, and among other activities, determines standard lending rates for financial institutions, and provides banking facilities to the government of Thailand, state enterprises, and other government agencies.

(2) Issuance and Offering of Securities

Companies may raise funds through an issuance of equity or debt securities. Securities issuable under the SEC Act include shares, debentures, convertible securities, treasury bills, bonds, investment units, warrants, and depository receipts. Issuance and offering of securities by Thai private or public companies or non-Thai entities to any persons in Thailand are subject to the requirements of the SEC Act with certain exemptions, such as rights offerings.

Legal requirements of the offering of securities depend on the type of securities (e.g., new or existing securities) and the method of offering (e.g., public offerings, private placements, rights offerings). In general, there are two main procedures required for the issuance and offering of securities, which are: (i) an approval by the Office of the SEC (the "**SEC Office**"); and (ii) a filing of the registration statement and draft prospectus.

The SEC will consider the qualifications of the issuers and supervise the disclosure contained in the registration statement and draft prospectus to ensure that investors have sufficient information for making their investment decision.

A. Equity Securities

Equity securities typically refer to shares, warrants exercisable to acquire shares, and investment units. This section will focus on the issuance and offering of shares only. Requirements for other types of securities are similar to those of shares in principle; nevertheless, specific requirements are different based on the impact to existing shareholders and protection of investors.

These are the main types of shares offerings:

(i) Public Offerings (the “PO”)

Only a public company may offer shares to the public. An IPO is conducted by the public company that is going to list and trade its shares on the SET. After listing on the SET, the subsequent offering of newly issued shares to the public is generally referred to as a PO.

A PO requires an approval from the SEC Office, filing of a registration statement and submission of a draft prospectus (collectively, the “**Offering Documents**”) to the SEC Office and, if shares are to be listed, the SET’s approval for listing of shares. A financial advisor who is on the SEC-approved list is required to collaborate in preparing the application for approval and the filing of the Offering Documents. Underwriter(s) must be appointed to handle and manage the sale and offering of the shares to the public.

A PO may only be conducted after: (i) the Offering Documents have become effective; and (ii) the approval of the offering has been granted by the SEC Office.

The SEC aims to protect investors by, among other measures, granting an approval based on certain criteria. The issuer and the shares must meet qualifications, which include a clear and fair shareholding structure, no cross-shareholding, no share transfer restrictions, a sufficient checks and balances system between the board of directors and management (e.g., independent directors, audit committee), no conflict of interest between the issuer and its directors, executives or major shareholders, three-year track records, including fair and sufficient information disclosures; in particular, financial statements must be prepared in accordance with applicable accounting standards (currently the Thai Financial Reporting Standards or TFRS).

(ii) Private Placements (the “PP”)

A PP is an offering of newly issued shares to specific investors. An approval by the SEC Office is deemed to be granted and filing of the Offering Documents is exempted if the offering is made by way of any of the following manners:

- 1) offering to any persons with an aggregate value not exceeding Baht 20,000,000 during any 12-month period, using the offering price as a basis for calculation;
- 2) offering to no more than 50 persons during any 12-month period; or
- 3) offering to institutional investor(s) (e.g., commercial banks, finance companies, securities companies, insurance companies, provident funds, mutual funds). Please note that from 1 October 2022 onwards, institutional investors will also include professional investors, venture capitalists and persons having relationship with the issuer such as directors, executives, employees, etc.

Note that the number of investors referred to in 2) above and the aggregate value of the offering referred to in 1) above will not include offers made to institutional investors, regardless of whether the offerings are made concurrently or at different timing.

The SEC has imposed an additional condition on the issuance of PP shares by listed companies that approval is deemed granted only if the PP shares are offered at the market price or a discount of 10 % or less. Additionally, the offering of PP shares must be for the best interest of the issuing company and its shareholders, and PP offerings are subject to other requirements. For example in PP offerings, the notice of the shareholders' meeting must contain the required information as prescribed in the relevant notification and there are certain restrictions on the advertisement of the offering. Otherwise, an approval from the SEC is required. After completion of the offering, the issuer must report the offering results to the SEC Office within the specified period.

(iii) Right Offerings (the "RO")

An RO is an offering of newly issued shares to existing shareholders of a company in proportion to their shareholdings. An RO is exempted from SEC approval requirements and filing of the Offering Documents requirements.

As part of an RO scheme, the RO may provide for the shareholders' right to subscribe for additional shares in excess of their entitlement, which is commonly adopted by listed companies to ensure that its RO shares will be fully subscribed to, and the full proceeds are obtained.

(iv) Employee Stock Option Plans (the "ESOP")

An ESOP is an offering of newly issued shares to the company's directors and/or employees to encourage them to take part in the company's ownership and consequently maximize benefits to the company's business through their contributions at work.

An approval by the SEC is deemed to be granted, which means the filing of Offering Documents is exempted for an ESOP. Nevertheless, certain approval conditions must be fulfilled.

In the case of an ESOP offered by a foreign company to directors and/or employees who are working in Thailand, if the offeror falls under the meaning of "foreign company" or "conglomerate" in Thailand and the directors and/or employees to which such ESOP is being offered to fall under the definition of "director" or "employee" under the relevant laws, it is deemed to have been approved by the SEC and no Offering Documents are required. The only obligations imposed on the offeror are to submit information on the features of the securities (including terms and conditions related to a grant of rights to directors and/or employees) and a sale report to the SEC Office.

(v) Share Offerings by Foreign Companies

Apart from the issuance and offering by Thai companies as mentioned above, the SEC regulates foreign companies offering their shares to investors in Thailand.

Share offerings by foreign companies are subject to the SEC's approval and Offering Documents in a similar manner to those applicable to Thai companies. The offering can be divided into two categories: (i) primary listings: an offering by a foreign company not having

its shares listed on any foreign stock exchange; and (ii) a secondary listing: offerings by a foreign company that has or will have its shares listed on one or more foreign stock exchanges.

B. Debt Securities

Debt securities typically refer to debentures, debenture warrants, treasury bills, and bonds. Among other debt securities, the issuance of debentures is a common method of debt financing in Thailand, which can be issued by both public and private companies. This section will focus on the issuance and offering of debentures only. There are various characteristics of debentures, (e.g., plain-vanilla debentures, convertible debentures, debenture warrants, and structured debentures) which are available for the issuer's structure.

Not all debt instruments can be listed on the Bond Electronic Exchange (the "BEX"), which is a subsidiary of the SET, and traded on a secondary market. Debt instruments to be listed on the BEX must have certain qualifications including having an offering value of not less than Baht 100,000,000 and being approved to issue and offer for sale by an agency in charge of supervising the issuance and offering of such debt instruments (e.g., the SEC).

These are the main types of debenture offerings:

(i) Public Offering

A public offering of debentures that can be offered and sold to any investors requires the SEC's approval and filing of Offering Documents before the offering can be made.

(ii) Private Placement

A private placement of debentures can be offered and sold to certain investors (e.g., offerings to no more than 10 specific investors within any four-month period (PP-10), offerings to institutional investors, and offerings to high-net-worth investors). From 1 October 2022 onwards, apart from financial thresholds, investors considered as high-net-worth must also meet qualifications regarding knowledge and experience. The offering of debentures to no more than 10 specific investors and to institutional investors is deemed approved by the SEC, while there is no exemption for approval by the SEC for the offering of debentures to the high-net-worth investors, provided that the issuer has registered transfer restrictions for the debentures with the SEC. The transfer restrictions must contain a statement that the issuer will not accept any transfer registration if such transfer disqualifies the debentures as a private placement. The offering by way of private placement generally requires the issuer to file Offering Documents with the SEC, except for an offering to 10 specific investors.

Other than the transfer restrictions that must be submitted with the SEC, the issuer must report the purpose of the funds received from an offering of debentures to the SEC as well as submitting a sales report and report of fund utilization to the SEC. In addition, an offering by way of PP-10 will be limited to the offering to: (i) institutional investors; and (ii) related investors to the issuer (e.g., a director of the issuer or major shareholder holding more than 10 % of the total number of shares of the issuer, etc.).

Apart from the issuance of debentures on an issue basis, debentures may be issued on a program basis (a Medium Term Note Program: MTN). The issuer may offer the sale of debentures with various features under an approved principal amount and offering methods within two years from the date of approval granted by the SEC. The issuance of debentures

under an issue basis can apply to all types of debentures while the program basis cannot apply to the issuance of subordinated debentures, perpetual debentures, convertible debentures, structured debentures, and debentures rated below investment grade or non-graded debentures. MTN programs have attracted issuers' interest and have been widely used among issuers.

(3) Compliance After Listing

A. Listed Companies

(i) Disclosure

After listing on the SET, listed companies are required to disclose certain information to all investors within a specific timeframe via the SET portal system. The disclosure requirements can be divided into two groups, which are periodic disclosures and disclosures of material events.

Examples of periodic disclosures are an annual financial statement (audited), a quarterly financial statement (reviewed), an annual registration statement and annual report (a "**Form 56-1 One Report**").

The conditions set out in Form 56-1 One Report are minimum requirements; therefore, if there is any information that may have a material effect on the decision-making process of investors, listed companies must disclose such information. Examples of disclosures of material events include setting the date of the shareholders' meetings, acquisitions or dispositions of assets, connected transactions, increases or decreases of capital, payments or non-payments of dividends, change of directors, and minutes of the shareholders' meetings.

(ii) Transactions on Acquisition or Disposition of Assets

When a listed company or its subsidiary has acquired or disposed of an asset, the listed company must calculate the transaction value or size to determine whether such transaction will be subject to requirements and procedures prescribed under relevant regulations. The requirements and procedures include disclosure of information to the SET, circular notice to the shareholders, approval from the shareholders together with an independent financial advisor (IFA)'s opinion and/or filing of new securities listing. The calculation of the transaction size is based on different methods depending on the nature of the transaction, i.e., net tangible assets, net operating profits, total value of consideration paid or received, and value of securities issued as consideration for the payment of assets.

"Asset" means tangible items (e.g., land, buildings, machinery, and investments) or intangible items (e.g., leasehold rights, concession rights, licenses, and claims) owned by a person or business, having value, and that can be transferred.

"Acquisition or disposition of assets" means an entering into or a decision to enter into any contract or agreement to cause an acquisition or disposition of assets, the creation or waiver of rights to acquire or dispose of assets, an acquisition or transfer of rights to long-term possession of assets, or an investment or cancellation of investment.

(iii) Connected Transactions (also known as Related Party Transactions (RPT))

When a listed company or its subsidiary is entering into a transaction with a *connected person* of the listed company, the listed company must consider types of the connected transactions together with calculation of the transaction value or size to determine whether such connected transaction will be subject to requirements and procedures prescribed under the relevant regulations. The requirements and procedures include disclosure of information to the SET, approval from the board of directors and/or approval from the shareholders together with an IFA's opinion.

A "connected person" (also known as a related party) means a person (either individual or juristic person) who may have a conflict of interest with the listed company's interests causing a conflicting situation to make a decision to enter into the transaction, for example:

- 1) directors, executives, major shareholders, controlling persons, persons to be nominated as the management or controlling persons of a listed company, or a subsidiary company including related persons and close relatives of such persons;
- 2) any juristic person having a major shareholder or a controlling person as the following persons of the listed company or a subsidiary:
 - a) management;
 - b) major shareholder;
 - c) controlling person;
 - d) person to be nominated as the management or a controlling person; or
 - e) related persons and close relatives of persons from a) to d); or
- 3) any person whose behavior indicates them as an acting person or under major influence of persons from 1) to 2) above when making a decision, determining policy, handling management or operations, or other persons as the SET may deem to be appropriate.

Examples of some transactions that are exempted from the connected transaction requirements are as follows:

- 1) granting a loan in accordance with the rules on employee welfare;
- 2) a transaction in which the other party to the listed company, or both parties are:
 - a) a subsidiary in which the listed company hold no less than 90 % of the total shares; or
 - b) a subsidiary in which directors, executives, or related persons hold shares or has an interest in, directly or indirectly, of no more than the ratio or qualifications determined by the Capital Market Supervisory Board;
- 3) a transaction that has been made by the listed company with its subsidiary, in which the connected person holds no more than 10 % of the total shares and is not related with the listed company and the subsidiary in other manners; and
- 4) a connected transaction between the listed company's subsidiaries, in which the connected person holds no more than 10 % of the total shares and does not relate with the subsidiaries in other manners.

(iv) Qualification to Maintain Listing Status

After listing on the SET, listed companies are required to continue maintaining their listing status with certain qualifications relating to the shares, shareholding structure, directors and management, internal systems, and other relevant details, which include, but are not limited to, the following:

- 1) a par value of shares must not less than Baht 0.5 per share;
- 2) directors and management must have qualifications as prescribed by the SEC Act or the SEC regulations;
- 3) a good corporate governance system is in place;
- 4) an auditor approved by the SEC must be appointed;
- 5) an internal control system is in place as required by the Notification of Capital Market Supervisory Board;
- 6) the listed company and its subsidiary must not have a conflict of interest as specified in the Notification of Capital Market Supervisory Board;
- 7) disbursement of minority shareholders must meet the free float requirement (with no less than 150 retail shareholders who collectively hold no less than 15 % of a listed company's paid-up capital);
- 8) the listed company must have a provident fund; and
- 9) the listed company must designate the SET, or a third party approved by the SET, to act as its listed securities registrar.

(v) Delisting

Delisting may occur by the following means:

- 1) voluntary delisting - delisting upon request by a listed company; or
- 2) possible delisting - delisting in a case where there is a ground for delisting (such as, operation performance and/or financial conditions of a listed company falling within the criteria (e.g., the auditor was unable to express an opinion or expressed opinions that the financial statements were not appropriate for three years consecutively), having all or most of its assets in the form of cash or short-term securities (Cash Company) for more than six months, listed shares do not meet all listing qualifications (e.g., having a par value less than Baht 0.5 per share), breaching or infringing the rules, disclosing false information, not disclosing material information that could severely affect the benefits or decisions of the shareholders, or the nature of business operations of a listed company is not suitable for it to remain as a listed company).

For a voluntary delisting, there must be a tender offer under which the Takeover Rule¹ will be applied, but not for the possible delisting. A voluntary delisting must be approved by a shareholders' meeting vote of no less than 3/4 of the total issued shares of the listed company and with no more than 10% objections of the total issued shares.

For a possible delisting, subject to the delisting process, the Board of Governors of the SET may order the delisting of shares of the listed company upon the occurrence of certain events. After the shares are delisted, those shares will lose their status of listed securities.

However, in certain cases where a listed company could be able to repossess the qualifications, such listed company will have to follow the relevant procedures to eliminate the grounds for delisting in order to resume trading within the prescribed periods.

(vi) Other Compliance

In addition to the abovementioned compliance requirements under the SEC Act, the SEC regulations and the SET regulations, a listed company must also comply with other legal requirements under the Public Limited Company Act, B.E. 2535 (1992), for example,

¹ Please refer to the topic of the "Takeover Rule".

compliance with procedures for convening a shareholders' meeting (either annual general shareholders' meetings or extraordinary general shareholders' meetings), capital increases, share repurchases, and amalgamations.

(vii) Good Governance

Besides regulatory compliance, listed companies tend to adopt policies, e.g., corporate governance (CG), anti-corruption, environment, social and governance (ESG), which are stricter than minimum legal requirements to increase their investment attractiveness. From the investors' perspective, the level of sustainable business management policies becomes a factor to consider when making investment decisions.

B. Directors and Management

Apart from compliance by listed companies, directors and management of listed companies must perform their duties with responsibility, due care and loyalty, and in compliance with all laws, constitutional documents of the listed companies and resolutions of the shareholders' meetings. In performing their duties, the directors and management must make decisions in the best interest of the listed company, based on sufficient information and without any conflict of interest in such transaction (also known as the Business Judgement Rule).

Furthermore, the directors and management also have reporting duties, such as reports to the SEC on their securities holding in the listed company and reports to the listed company on their interests related to the management of the listed company or a subsidiary. In addition to legal requirements under the laws and regulations, the board of directors are encouraged to follow and adopt the Corporate Governance Code for Listed Companies 2017 (CG Code) for good corporate governance to enhance a high standard of best practices of the listed company.

C. Shareholders and Investors

(i) Report of the Acquisition or Disposition of Securities

The investors (whether existing shareholders of any listed companies, or not) are required to report their increase or decrease of the securities held by them when their holding percentage reaches or exceeds any multiple of 5 % of total voting rights (i.e., 5 %, 10 %, 15 %, 20 %, 25 % ... to 100 %, each referred as a trigger point) using Form 246-2 (Report of the Acquisition or Disposition of Securities), which is to be submitted to the SEC via the online system within three business days from the date of acquisition or disposition. Either direct acquisition of securities or acquisition through the Chain Principle² is subject to this reporting obligation. Form 246-2 can be prepared in either Thai or English.

(ii) The Takeover Rule

When investors (whether existing shareholders of listed companies, or not) acquire shares in a listed company equal to or in excess of 25 %, 50 %, 75 % of the total voting rights (each referred to as a trigger point), including in cases of the Chain Principle, such acquirer is subject to an obligation to make a mandatory tender offer of all shares, including convertible

² Acquisition through the Chain Principle means any acquisition of the significant control over a juristic person as an existing shareholder of a listed company. Significant control refers to: (i) holding of shares equal to or more than 50% of the total voting rights in the immediate holding entity; or (ii) nominating a substantial number of directors to control the juristic person who are existing shareholders of the listed company.

securities (i.e., securities that are convertible or transfer subscription rights that are issued by the listed companies) of such target company.

In determining the trigger point, the number of shares held by *related persons* (e.g., a spouse, minor child, an individual or a juristic person who is a shareholder of the acquirer in an amount exceeding 30 % of the total voting rights of such acquirer) and *persons acting in concert* (e.g., persons who have the mutual intention to exercise their voting rights in the same direction) with the acquirer must be included in the calculation.

Upon triggering the tender offer obligation, the acquirer must: (i) submit a report on the total number of shares held in Form 246-2 to the SEC by the end of the next business day after the acquisition resulting in triggering the tender offer; and (ii) submit a tender offer document (Form 247-4) to the SEC within seven business days from the submission date of Form 246-2. A tender offer document must be prepared by a financial advisor approved by the SEC.

The acquirer must commence the tender offer period within three business days from the date of the tender offer document. The tender offer period will be not less than 25 business days but not more than 45 business days. After the end of the tender offer period, the acquirer must submit the tender offer results report to the SEC within five business days.

After the tender offer has been made: (i) within six months from the end of the tender offer period, the offeror/acquirer must not purchase additional shares of the target company with more favorable terms than those specified in the tender offer; and (ii) within one year from the end of the tender offer period, the offeror/acquirer must refrain from certain actions which are of a material nature different from those specified in the tender offer document. Note that there is no squeeze-out provision under Thai law.

Nevertheless, the acquirer can be exempted from the requirement of making a mandatory tender offer by satisfying an exemption or a waiver. For example, after the acquisition, the investor can voluntarily reduce their shareholding in the target company below the relevant trigger point by selling such shares on the main board of the Stock Exchange; or before the acquisition, the acquirer may apply for a waiver to the SEC or the Takeover Panel through the SEC (as the case may be) subject to certain circumstances.

In addition to the mandatory tender offer, there is a voluntary tender offer. A voluntary tender offer is an offer made voluntarily by an acquirer in the case such acquirer does not acquire the shares of the target company that would trigger the tender offer trigger point, but such acquirer is desirous to take over the target company.

(4) Securities Businesses

Securities businesses currently include: (i) securities brokerages; (ii) securities dealings; (iii) investment advisory services; (iv) securities underwriting; (v) mutual fund management (MF); (vi) private fund management (PF); and (vii) other businesses relating to securities as specified by the Minister of Finance with recommendation by the SEC, such as securities borrowing and lending (SBL) and venture capital fund management (VCF).

Conducting securities businesses operations requires a securities business license, which can be categorised into several types depending on scope of the services.

In the case that an applicant for a securities business license is a foreigner, such applicant can directly apply with the SEC without having a duty to apply for a foreign business operation license.

Digital asset businesses currently include: (i) digital asset exchanges; (ii) digital asset brokerages; (iii) digital asset dealers; and (iv) other businesses relating to digital assets specified by the Minister of Finance with recommendation by the SEC, such as digital asset fund management and digital asset advisory services.

Conducting digital asset businesses requires a license pursuant to the Emergency Decree on Digital Asset Businesses, B.E. 2561 (2018). Note that a foreign applicant for a digital asset business license is required to also apply for a foreign business operation license.

(5) Legal Enforcement

To ensure that securities laws and regulations will be complied with, legal enforcement is one of the most crucial functions under the law. The SEC is the responsible body that oversees regulatory compliance and enforcement of the governing laws.

If there is a suspicion of a violation against securities laws, the SEC will preliminarily gather information and evidence. If there are grounds for infringement and sufficient evidence of such infringement, the SEC will take steps to enforce the law. The three enforcement actions available to the SEC are: (i) administrative actions (only applicable to persons under the supervision of the SEC, e.g., financial advisors, securities business operators); (ii) criminal actions; and (iii) civil actions.

A. Insider Trading

Under the SEC Act, the purchase or sale of securities (e.g., shares, warrants, bonds, and debentures) which are listed in the Stock Exchange or traded in an over-the-counter center while possessing inside information of the securities' issuer is prohibited, either for oneself or other persons. Inside information means information that has not been generally disclosed to the public that is material to the change of price or value of the securities (so-called "non-public price sensitive information"). The law also prohibits the disclosure of inside information, whether directly or indirectly and by any means, while knowing or reasonably knowing that the receiver of such information may exploit the information for securities trading.

The insider trading laws cover the misconduct of both insiders, i.e., directors, management, who revealed inside information (the tipper) and persons who knowingly use such information to trade securities or release such information to other persons (the tippee). If the insiders trade securities (including close relatives who trade securities in a different manner than normal practice), the law will presume that such person is in breach of insider trading provisions by which such alleged person will have to disprove.

Nevertheless, there are some exemptions to the law where the person who knows or possesses inside information may sell or purchase securities. For example, actions in compliance with the law or a court's order and actions not having characteristics of taking advantage of other persons or any characteristics as specified in the notification of the SEC.

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