

Legal Express

Depository Receipts in Thailand

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Investors in Thailand wishing to invest in foreign securities may not only do so directly via local licensed securities business operators but also via certain instruments issued in Thailand such as Depository Receipt (“DR”), Derivative Warrant (DW), Foreign Investment Fund (FIF) and Exchange Traded Fund (ETF).

Introduced in 2015, DR which represents underlying foreign securities having characteristics prescribed by the Office of the Securities and Exchange Commission (the “SEC”) is another instrument that allows investors in Thailand to invest in foreign securities, whereby the investors are allowed to hold and trade securities on the Stock Exchange of Thailand (the “SET”) in Thai Baht whilst retaining the benefit of capital gains and dividends of the underlying foreign securities. Under the Securities and Exchange Act B.E. 2535 (1992) (as amended) (the “SEC Act”), DR may be issued and offered to investors in Thailand upon receipt of the SEC approval at the ratio of 1 DR to 1 foreign securities.

Eligible Foreign Securities

Pursuant to Notification of the Capital Market Supervisory Board No. TorJor. 16/2558 entitled Issue and Offer of Depository Receipts and the Notification of the Office of the Securities and Exchange Commission No. SorJor. 28/2558 entitled Additional Requirements Relating to Issue and Offer of Depository Receipts (the “DR Notifications”), only foreign securities with the following characteristics are permitted to be the underlying foreign securities of DRs:

- ordinary shares listed on the foreign stock exchanges of (i) the Greater Mekong Sub-region (e.g. Cambodia, Laos, Myanmar, Vietnam and Yunnan province in China), with an average market capitalization for the last 15 business days of not less than Baht 2,000 million; or (ii) those approved by the SEC, which currently comprises 31 countries (e.g. Australia, People's Republic of China, Korea, Hong Kong SAR, Japan, Singapore, United States of America); and
- foreign ETF units that possess characteristics prescribed by the SEC.

Issue and Trading

Under the DR Notifications, only certain entities are qualified to be an issuer, namely (i) commercial banks, (ii) securities companies licensed to undertake a brokerage business (excluding those that are restricted to debt securities or investment units) and (iii) companies

wholly-owned by the SET. In issuing and offering the DRs, pre-approval from the SEC shall be obtained, provided, amongst others, that the SEC are satisfied with (i) the sufficiency of the issuer's administrative and work systems, especially those concerning procedures for trading activities, (ii) eligibility and characteristics of DRs and (iii) completeness of a depository agreement. Further, an issuer is required to comply with the following post-approval requirements, failing which the SEC may withdraw its approval and cancel the entire offering:

- the offering shall take place within six months from receipt of the SEC approval;
- there shall be at least 50 subscribers; and
- the total subscription amount is at least (a) Baht 20 million where the underlying foreign securities are shares traded on the stock exchanges of the Greater Mekong Sub-region countries or (b) Baht 50 million in other cases.

After receipt of the pre-approval, the issuer may proceed to disseminate prospectus, offer DRs, and secure the underlying foreign securities for the DRs prior to having them deposited with a custodian outside of Thailand, issuing and distributing the DRs, and having them listed on the SET.

As listed securities, DRs are traded in the same manners as other listed securities on the SET whilst DRs holders are considered effectively indirectly hold the underlying foreign securities and be entitled to all of their financial benefits, provided that the amount of which shall be subject to the terms and conditions set out in the prospectus and the depository agreement. For instance, such financial benefits would generally be subject to transaction fees payable to, or deductible from the entitled benefits by, the issuer.

Depository Agreement

In addition to the prospectus, transactions relating to DRs are subject to a depository agreement which governs the rights and obligations of the issuer and DR holders. Key terms include provisions governing relationship between the issuer and DR holders, e.g. their rights and obligations, resolutions and meetings of DR holders, terms and conditions on their issue, redemption and cancellation, actions to be taken by the issuer and relevant compensation for inability to procure sufficient DRs for redemption, and fees and expenses charged to DR holders.

Recent Development

In order to provide greater flexibility in the offering of DRs and improve their attractiveness, the SEC is considering amending relevant regulations, including those concerning exemptions to the 1 to 1 ratio requirement, a change from the current offering process to a direct listing, and an increase of eligible underlying foreign securities to include, inter alia, Collective Investment Scheme (CIS), REITs and Infrastructure Fund and Bond ETF.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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