

Legal Express

Acquisition and Disposition of Assets by Listed Companies

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This note sets out key regulatory considerations concerning the acquisition and disposition of assets by Thai listed companies.

As a publicly listed company, a company is under a stricter compliance than a private company given larger stakeholders. The Office of the Securities and Exchange Commission (the “SEC”), the Capital Market Supervisory Board and the Stock Exchange of Thailand (the “SET”) have prescribed specific regulations to monitor activities of listed companies, in particular, concerning an acquisition and disposition of material assets pursuant to (i) the Notification of the Capital Market Supervisory Board Notification No. TorJor. 20/2551 entitled Rules on the Entering into Material Transactions Deemed as the Acquisition or Disposition of Assets (as amended) and (ii) the Notification of the Board of Governors of the Stock Exchange of Thailand entitled Disclosure of Information and Other Acts of the Listed Company Concerning the Acquisition and Disposition of Assets, 2547 (2004) (as amended) (the “**Major Transaction Rules**”).

The Entering into Transactions

When acquiring or disposing of an asset of significant size, as determined in accordance with the Major Transaction Rules, whether by a listed company or its subsidiary, a listed company is required to make a disclosure regarding information of such transaction to the investors and the SET. The extent, timing and means of disclosure depend on the size of the transaction. In addition, if the size of the transaction reaches or exceeds 50% of its total assets (considered on a consolidated basis), an opinion of an independent financial advisor and an approval from the shareholders meeting is required.

Transaction Size

In order to determine the size of the transaction, a listed company shall apply four calculation methods (i.e. net tangible assets method, net operating profits method, total value of consideration method, and value of securities issued method), the highest value of which shall be used to classify the level of significance of the transaction.

Class of Transaction

The SEC categorises the significance of a transaction into four classes with different sets of compliance criteria based on its size, starting from (i) a prompt notification to the SET, (ii) sending information memorandum (the details of which are as prescribed in the Major Transaction Rules) regarding the transaction to all the shareholders, to (iii) seeking approval from shareholders. Moreover, for the purpose of determining the class of a transaction, the size of all acquisition or disposition transaction(s) (as the case may be) entered into by the listed company and/or its subsidiaries during the past six months prior to such transaction (excluding those already approved by the shareholders) will be combined for this purpose (the “Combined Transactions”).

Class 1

The transaction is considered as Class 1 Transaction when the value of the Combined Transactions is equal to or higher than 50% but less than 100%.

Class 2

The transaction is considered as Class 2 Transaction when the value of the Combined Transactions is equal to or higher than 15% but less than 50%.

Class 3

The transaction is considered as Class 3 Transaction when the value of the Combined Transactions is less than 15% but new shares of a listed company are issued as consideration.

Class 4

The transaction is considered as Class 4 Transaction or “Back Door Listing” when a listed company or its subsidiary acquires an asset of a non-listed company and (i) the value of the Combined Transactions is 100% or higher, (ii) such acquisition results in a transfer of control of a listed company from the existing controlling person(s) to the owner of acquiring assets, or (iii) such acquisition is a result of an amalgamation where the shareholders of a listed company hold less than 50% of share capital in the amalgamated company. Given the significance of the transactions, the SEC imposes additional requirement to require a listed company to combine a series of related transaction during the previous 12-month period as a single transaction for determination of Class 4 Transaction.

Once the transaction is considered as Class 4 Transaction, a listed company shall also be required to apply for the relisting of securities to the SET due to the significant change of its business unless exempted.

Shareholders Approval

To the extent an approval from the shareholders meeting of a listed company is required under the Major Transaction Rules, a listed company shall send a 14 days’ advance notice calling a shareholders meeting and obtain approval of three quarters of the votes of the shareholders present and eligible to vote at the shareholders’ meeting, excluding the votes of any shareholder(s) having interest in such matter. In addition, its board of directors shall appoint an independent financial advisor to provide fair opinion in respect of the transaction and dispatch to the shareholders together with the invitation to the shareholders meeting.

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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