

Legal Express

Delisting in Thailand

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This note sets out the process and relevant regulatory aspects concerning the delisting of securities from the Stock Exchange of Thailand (the “SET”) or the Market for Alternative Investment (the “MAI”). In Thailand, a listed company may have its securities delisted on either a voluntary (the “Voluntary Delisting”) or involuntary (the “Involuntary Delisting”) basis.

Voluntary Delisting

Voluntary Delisting in Thailand may be pursued by companies seeking to implement strategic transformation or undertake internal reorganisation, and is considered to be within a quasi-absolute discretion of the shareholders. The SET will generally approve a delisting on the condition that the company arranges for a tender offer of all its issued shares and convertible securities to provide exit to minority shareholders.

Application

A listed company wishing to have its shares delisted shall fulfil the following requirements:

1. holding a meeting of its board of directors to approve the calling of its shareholders’ meeting to approve the delisting and to identify an offeror (the “Offeror”) who will make a tender offer as well as notifying such resolution (together with submitting the report on delisting in the prescribed form (Form 10-6)) to the SET within the date of the board meeting or at least one hour before the beginning of the first trading session of the SET on the following business day;
2. appointing a qualified independent financial advisor (the “IFA”) with approval of the independent directors and co-operating with the IFA, including providing sufficient information or undertaking any action requested, in order to enable the IFA to present its opinions to the shareholders’ meeting on the merits of the delisting;
3. delivering to the shareholders at least 14 days in advance, the notice of the shareholders’ meeting, together with the following information:

- 3.1 facts and rationale for the delisting;
 - 3.2 opinions of its independent directors and the IFA on the delisting and the tender offer; and
 - 3.3 updated information concerning its business (Form 56-1 One Report); and
4. convening its shareholders' meeting, at which the delisting shall: (i) be approved by not less than 75 per cent of its total issued shares; and (ii) not be opposed by shareholder(s) holding more than 10 per cent of its total issued shares, and notifying the resolution of such meeting to the SET within the date of the meeting or at least one hour before the beginning of the first trading session of the SET on the following business day.

After fulfilling the above requirements, the company shall submit a delisting application in the prescribed form (Form 10-7) to the SET. The Board of Governors of the SET (the "SET Board") will then consider and notify the company of its decision together with any conditions within 30 days of receipt of the complete application.

Delisting Tender Offer

Following receipt of the SET's approval, the company shall procure that the Offeror proceed with a tender offer for all the shares and convertible securities in accordance with the regulations of the Office of the Securities and Exchange Commission (the "SEC"). A delisting tender offer period shall last for 45 consecutive business days and the tender offer price shall not be lower than the highest price calculated based on the following criteria:

1. the highest price paid for the shares by the Offeror, its concert party(s) and their respective related person(s) during a period of 90 days prior to submission of the tender offer;
2. the weighted average market price of the shares during the period of five business days prior to the earlier of the meetings of the board of directors or shareholders, at which the delisting is approved;
3. the net asset value of the company, calculated based on the book value, which has been adjusted to reflect the latest market value of its assets and liabilities; and
4. the fair value of the shares as appraised by an independent financial advisor.

The tender offer price may be subject to adjustments should there occur any event as specified in the relevant regulations during the tender offer period, e.g. an occurrence of any event or act during the tender offer period, which causes or may cause a material adverse effect on the status or assets of the company.

Within 15 days from the tender offer date, the company shall prepare for its shareholders the opinion of the company on the tender offer (Form 250-2) and arrange for the IFA opinion on the same, allowing the shareholders to make informed decisions regarding the tender of their shares. After the tender offer period, the tender offer result form (Form 256-2) shall be submitted and disclosed to the SET. Subsequently, the SET Board will publicise the effective date of the delisting, on which date all the company's listed securities will lose their status as listed securities.

Foreign Listed Company

A foreign company, having its shares listed on the SET as a secondary listing, and wishing to have its shares delisted from the SET, is obliged not only to fulfil the requirements under the regulations of the overseas exchange on which its shares are listed, or (if listed on several exchanges) the exchange which that company designates as its home exchange (the “Home Exchange”), but also to notify the SET of its board resolution approving the delisting within the prescribed period and ensure that there is a “reasonable exit” for shareholders trading their shares in Thailand (the “Shareholders in Thailand”). This may include a mechanism supporting the sale for the Shareholders in Thailand to trade their shares on the Home Exchange for three months or more prior to, and one month or more from, the effective date of the delisting, or any other means as approved by the SET. Further, the SET may: (i) require that the foreign company obtain its shareholders’ approval for the delisting in the manner prescribed above if more than 25 per cent of its total number of issued shares is deposited with a depository centre as designated by the SET; or (ii) stipulate any other conditions as it deems appropriate.

Continue Obligations After Delisting

While the company will generally be released from all the duties of a listed company as required under the Securities and Exchange Commission Act B.E. 2535 (1992) (as amended) (the “SEC Act”) after being delisted, the company, as a public limited company, would still be required to comply with certain obligations, including those related to the disclosure of information, under the Public Limited Company Act B.E. 2535 (as amended). Furthermore, where there appears to be other minority shareholders of more than 5% of the total voting rights of the company or the total number of shareholders of the company is more than 100 persons, the company will remain subject to certain duties under the SEC Act, including the duties to disclose a report on financial and non-financial information to the SEC and those relating to connected and major transactions.

Involuntary Delisting

As a matter of policy, the SET considers delisting as a last resort since it will inevitably cause adverse impact to the respective minority shareholders. Unlike Voluntary Delisting, there is no exit for the minority shareholders as there is no obligation for a company to have an offeror making a tender offer on the company’s shares.

A company may be subject to an Involuntary Delisting if it fails to meet regulatory requirements or maintain its qualifications as being a listed company. The SET may consider financial deterioration, failure to comply with the disclosure regulations and/or operational and listing non-compliance as grounds for determining that a company is no longer qualified to maintain its listing company status. Prior to being delisted, the SET will notify and give the company an opportunity to clarify or explain, and rectify its position.

Whilst a listed company is obliged to maintain not less than 150 minority (i.e. non-strategic) shareholders which represent not less than 15 per cent of its paid-up share capital, the SET does not stipulate that any failure to comply with this requirement constitutes a ground for delisting. However, if such incident occurs, the SET may require that the company arrange to meet the “free-float” requirement within one year. Failure to do so would subject it to additional listing fees for subsequent years.

Trading Suspension

Where it appears that grounds for delisting exist, the SET may: (i) order a temporary trading suspension by posting a suspension (SP) sign; or (ii) post a non-compliance (NC) sign to draw the attention of the public. These postings will continue until such grounds would be mended or until the SET orders the delisting.

Once the grounds for delisting have been eliminated, the company may request the SET to lift the suspension or non-compliance sign. If satisfied, the SET may lift such sign and trading will resume. In this regard, the SET may stipulate other conditions or requirements it deems appropriate for the company to comply with for the purpose of resuming trading.

Rectification Period and the Involuntary Delisting Process

Upon an occurrence of any possible grounds for Involuntary Delisting, the SET will generally permit the company to rectify the circumstances giving rise to such grounds within a prescribed period. Different grounds require different periods of time for rectification. Where multiple grounds exist, the SET will consider each ground separately and, in the event that the company cannot rectify such grounds, will commence the involuntarily delisting process with respect to the ground with the nearest expiry date for resolving.

In light of the delisting, the SET shall allow the trading of the company's shares for seven business days prior to the effective date of the delisting as stipulated by the SET Board whereby the SET will maintain the posting of non-compliance (NC) sign throughout such period.

This update is intended solely to provide general information on recent regulatory and enforcement developments in Thailand and does not constitute legal advice or a legal opinion. Specific legal advice should be sought in relation to individual circumstances.

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