

## Legal Express

# Delisting in Thailand

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This note sets out the process and relevant regulatory aspects concerning 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 is considered to be within a quasi-absolute discretion of the shareholders, and the SET will generally approve a delisting on a 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:

- (a) hold a meeting of the board of directors to approve delisting and to identify an offeror (the “Offeror”) who will make a tender offer as well as notify such resolutions (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;
- (b) appoint a qualified independent financial advisor (the “IFA”) with approval of the independent directors and co-operate with the IFA, including providing sufficient information or undertake any action requested, in order to enable the IFA to present its opinions to the shareholders’ meeting on the merits of the delisting;
- (c) submit to the shareholders at least 14 days in advance, notice of a shareholders’ meeting, together with the following information:
  - (i) facts and rationale for the delisting;
  - (ii) opinions of its independent directors and the IFA on the delisting and the tender offer price (see further requirements below); and

- (iii) updated information concerning its business (Form 56-1)
- (d) convene 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 more than 10 per cent of its total issued shares.

Upon 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

After 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"). Except for certain exemptions, a delisting tender offer period normally lasts for 45 business days and the tender offer price shall be at least the highest of the following:

- (a) the highest price paid for the shares by the Offeror, its concert party(s) and the respective related person(s) during a period of 90 days prior to submission of the tender offer;
- (b) 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;
- (c) the net asset value of the company, adjusted to reflect the latest market value of its assets and liabilities; and
- (d) the fair value of the shares as appraised by the independent financial advisor.

After the tender offer period, 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 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.

## 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. Where one or more grounds for Involuntary Delisting exist, the SET will notify and give the company an opportunity to clarify or explain, and rectify its position.

### Involuntary Delisting Grounds

Any of the following events or circumstances constitutes grounds for Involuntary Delisting:

- (a) The shares do not meet the qualifications prescribed by the SET.
- (b) The company (i) fails to comply with applicable laws, regulations, orders, resolutions of the SET Board, listing agreement or circular prescribed by or entered into with the SET, (ii) discloses false information, or (iii) fails to disclose material information or discloses material information which is inaccurate, and such failure or disclosure significantly and adversely affects the rights, interests or investment decisions of investors or the share price.
- (c) The company causes, or its financial condition presents, any of the following: (i) its operating assets are or will be significantly depleted as a result of a sale, disposition, lease out, separation, operation suspension, abandonment, destruction, deterioration, seizure, expropriation, or other similar circumstances; (ii) all or substantially all of its business are inoperative for whatsoever reason and whether it is caused by the company or by any person; (iii) its auditor issues a disclaimer opinion on its financial statements for three consecutive years; or (iv) the financial condition disclosed in the latest audited financial statements or consolidated financial statements shows negative shareholders' equity.
- (d) The company enters into liquidation, is in receivership or conducts its business in a manner seriously prejudicial to the interest of its shareholders.
- (e) The nature of the business operations makes it improper to maintain its status as a listed company.
- (f) Any change in its shareholding in its subsidiary(s) or affiliate(s) which materially and adversely affects the performance, financial conditions and liquidity of the listed company.
- (g) The company has a ground to be delisted, or has been delisted, from its Home Exchange.
- (h) The company and/or its subsidiary(s) dispose of all or most of its assets used in the ordinary course of its business thereby causing the company and/or its subsidiary(s) to become a cash company for more than 6 months from the date on which the SET has received the report on the company's financial condition after the disposition of all or most of the assets of the company and/or its subsidiary(s) which has been reviewed by its auditor.
- (i) The SET orders a temporary suspension of trading of the company's securities on the SET by posting SP (Suspension) sign on such securities for a period of more than two years due to the company's violation or failure to comply with applicable laws, regulations, orders, resolutions of the SET Board, listing agreement or circular prescribed by or entered into with the SET, or to promptly report, clarify or disclose material information to the SET.
- (j) The company is unable to eliminate the grounds for delisting or to repossess the qualifications in order to resume trading pursuant to the procedure prescribed by the SET.

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 above “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. Such 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 SP sign. If satisfied, the SET may lift the suspension and trading will resume. Alternatively, the SET may stipulate other conditions or requirements which it deems appropriate to protect shareholders and general investors.

### Elimination of the Grounds for Delisting

Upon an occurrence of any of the above grounds, the SET will generally permit the company to rectify the circumstances giving rise to such grounds within a prescribed period. If those grounds stem from items (b)(i), (b)(iii), (c), (h) or (j) above, the company may be required to prepare a delisting rehabilitation plan (the “Plan”) and proceed without delay as follows:

- (a) appoint a qualified IFA to assist and participate in the preparation of the Plan;
- (b) hold the shareholders’ meeting, at which (i) a presentation outlining the Plan shall be made by the company and the IFA, and (ii) the Plan shall be approved by not less than 75 per cent of the shareholders or their proxies attending the meeting and eligible to vote; and
- (c) co-operate with the IFA in order to prepare and submit to the SET a quarterly report describing the progress of the implementation of the Plan.

Subject to the above procedures, if the company undertakes a rehabilitation under the Bankruptcy Act B.E. 2483 (A.D. 1940), as amended, a plan administrator appointed by the court will be qualified for the purposes of preparing the Plan, and the rehabilitation plan accepted by the creditors, and approved by the court, will be deemed approved by the shareholders. In addition, the plan administrator will prepare a report on the progress of the implementation of the rehabilitation plan in lieu of the company and the IFA.

Whilst the SET does not have a policy of intervening in the preparation of the Plan, or of publicly commenting on the management of a listed company, it intends to ensure that disclosure meets international standards and the shareholders are given full access to material information presented by the company. In any event, the SET Board may order a delisting if any of the following events occur:

- (a) the management of the company acts in bad faith or may cause a delisting; or
- (b) the company disregards, or fails to prepare or comply with the Plan; or
- (c) it is not possible to eliminate the ground for delisting.

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.

### Continuing Obligations

After delisting, a company having minority shareholders of more than 5% of the total issued shares of the company will remain subject to certain reporting duties under the Securities and Exchange Act B.E. 2535 (1992) (as amended) unless the relevant consent has been obtained from every single minority shareholder.

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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