



Legal Alert

7 February 2023

Experience the future of law, today

Private Placement by Listed Companies in Thailand

On 28 December 2022, the Office of Security and Exchange Commission (“SEC”) announced a notification on private placement by listed companies (“**New PP Notification**”), changing the concept of submissions and approval process of private placement by listed companies.

We summarized key issues of the New PP Notification which will come into force on 1 July 2023 in comparison to the currently applicable notification on private placement (“**Current PP Notification**”).

SEC’s Approval and Pre-Process

Under the Current PP Notification, the private placement is required to be approved by the SEC in case of a fixed price, or submission of required documents is to be considered as having a deemed approval in case of a floating market price.

Generally, the Current PP Notification requires private placements at a fixed price, regardless of a market price or not, to go through pre-process (30-day in advance of shareholders’ meeting) by submitting documents with SEC. After the issuer’s shareholders’ meeting approves on the offering, the issuer shall submit the required documentation to SEC. The SEC’s approval will be granted after the end of fifth day from the date of the submission. The same also applies to the case of private placement made from the remaining right offering (“**RO**”).

Under the New PP Notification, there is no requirement to submit documentation to the SEC based on being a fixed price or floating market price, but focus on whether or not it is material. If it is, the opinion of an independent financial advisor (“**IFA**”) is needed and to be submitted relevant documentations to the SEC as described below.

Material Private Placement Cases

The New PP Notification introduces the material cases concept which requires an opinion from IFA for the shareholders’ approval.

The material private placement cases are:

- a private placement that is offered at a discounted price lower than 10% of the market price;
- a private placement that results in the investor having the highest voting right in the issuer (including its related person); or
- a private placement that affects at least 25% of the issuer's earnings per share or control dilution.

This new requirement does not apply to private placement from remaining RO, which is exempted from being considered as a material case in its entirety.

Calculation of Market Price

Under the Current PP Notification, in case of the offering at a floating market price, the market price shall be either the volume-weighted average price ("VWAP"), or book building price. If both values don't reflect true value of the shares, the issuer's board of directors ("BOD") can use fair price as a market price. This gives the flexibility to the BOD in selecting the most appropriate option for determining the market price.

However, under the New PP Notification, the market price can only be VWAP with an exemption that in the case where VWAP cannot be calculated or where there exists a liquidity problem, book building, or fair value can then be used as market price respectively. This essentially means that the VWAP must be used in most cases unless the two exemptions apply which strips away the flexibility of the BOD in this regard.

Deloitte's Observation

Even though the New PP Notification has relaxed the listed company's obligation to submit documents to the SEC for private placement offering, the SEC still has the authority to require that the issuer submit the shareholder's meeting notice and IFA opinion for material cases to the SEC prior to the submission of the same to the issuer's shareholder. Therefore, in practice, the SEC may still require some pre-process for private placement that amounts to the material case.

In addition, with the deemed approval of the private placement, listed companies must ensure that the contents in the shareholders' meeting notice and the disclosure are accurate and done so in accordance with the process required under the New PP Notification, therefore, the listed companies should engage a legal advisor to help draft and review each documents carefully to ensure that its BOD complies with their fiduciary duties and that the issuer comply with its obligation under the New PP Notification.

Contacts

For more information on how Deloitte can help you, please contact:

Patcharaporn Pootranon

Partner - Tax & Legal - Corporate

Tel: +66 (0) 2034 0173

Email: ppootranon@deloitte.com

Natcharee Aphichotsuraratsamee

Managing Associate - Tax & Legal - Corporate

Tel: +66 (0) 2034 0000 Ext 17418

Email: naphichotsuraratsamee@deloitte.com

Narita Sakunchotikarote

Associate - Tax & Legal - Corporate

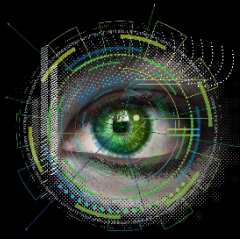
Tel: +66 (0) 2034 0000 Ext 16053

Email: nsakunchotikarote@deloitte.com



Dbriefs

A series of live, on-demand and interactive webcasts focusing on topical tax issues for business executives.



Power of With

Focus on the power humans have with machines.



Tax@hand

Latest global and regional tax news, information, and resources.

Get in touch



Deloitte Thailand | Add as safe sender

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Thailand

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organisation”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2023 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.