

AMENDMENTS TO THE SECURITIES AND EXCHANGE ACT B.E. 2535 (A.D. 1992)

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The Securities and Exchange Act B.E. 2535 (A.D. 1992) (the "SEC Act") has recently been amended by the Securities and Exchange Act (No. 4), which among others, sets forth major amendments in three important areas: reorganization of the structure of the Securities Exchange Commission ("SEC"), enhancement of mechanisms related to investor protection, and supportive mechanism for effective enforcement of securities laws.

Reorganization of the SEC Structure

To enhance the SEC's operational flexibility, a new capital markets supervision board, the Capital Markets Supervisory Board ("CMS Board"), will be added to the SEC office. The CMS Board shall assume, from the SEC, the authority to promulgate regulations and notifications under the SEC Act which governs day-to-day operational matters such as securities business, securities offering, tender offer, etc., with the aim to enable the SEC to focus on the role of policymaking and the supervision and development of the overall securities markets. In addition, to enhance transparency and internal control, new criteria for selecting the members of the SEC and the CMS Board including its composition, qualifications, and term of office, were adopted along with other measures such as empowering the SEC Office's Audit Committee to verify the financial report and financial information of the Office of the SEC as well as coordinate with the Office of the Auditor General, and ensure the SEC's compliance with the relevant laws and regulations.

Enhancement of Mechanisms Related to Investor Protection

The amendments grant increased protection for investors and set up mechanisms to reduce associated risks, enhance operational efficiency and encourage transactions for services related to securities markets. Major amendments are as set out below:

1. More stringent fiduciary duties for directors and management of listed companies

Company directors and management shall be protected by the law if they perform their duties in good faith and with care to preserve the company's interests based on information

which they honestly believe to be sufficient for decision-making and without conflict of interest. Company directors or management who commit dishonest acts or perform duties with gross negligence shall be prohibited from obliterating their wrongful deeds by seeking resolutions/ratification at the shareholders' or board of directors' meeting.

The board of directors must appoint a Company Secretary to perform the following duties on behalf of the Company/Board of Directors:

- Preparing and maintaining register of directors, notices calling for shareholders' and directors' meetings, minutes of shareholders' and board of directors' meetings, and Company's annual report.
- Maintaining a report on directors or executives who have a vested interest in relation to a resolution.
- Performing any other matters as specified in the notification of the CMS Board.

As with Company directors and management, Company Secretary must also adhere to the principles of business judgment, duty of loyalty, and conflict of interest rules, the breach of which could expose the directors, management and/or Company Secretary to criminal sanctions.

2. Affirmative action for investors

Shareholders, jointly or individually, holding shares in aggregate of 5% of voting shares or more, may:

- File the claim on behalf of the company to disgorge ill-gotten benefits obtained by the company directors or management and claim for reasonable litigation expenses from the company.
- Submit a proposal to include an agenda to be considered in the shareholders' meeting.

In addition, shareholders may bring a civil action on their own behalf to claim for compensation/damages from directors or management who disclose false information or fail to disclose material facts that should be disclosed.

3. Revised rules for takeovers

Provisions regarding the acquisition of securities for business takeovers are revised to make it clear that the voting percentage of shares held in a company (instead of the shareholding percentage) shall be used as the basis of calculating the 5% reporting requirements of acquisitions and disposals of shares and the thresholds to trigger a tender offer, i.e. 25%, 50%, and 75%. The revised rules also expand the coverage of "securities" to include such securities or instruments entitling the holders to receive securities of the acquired company such as derivatives warrants.

Holdings of securities by both "controlling person" and "controlled person" shall be counted to ensure that the securities held by related persons with a 30% shareholding relationship both downwards and upwards throughout the chain are counted for the purpose of

calculating the reporting requirements of acquisitions and disposals of shares and the thresholds to trigger a tender offer. In addition, persons who act together/collaborate to acquire and exercise power over the acquired company shall be regarded as "acting in concert" and their voting rights shall be counted together for the purpose of calculating the reporting requirements of acquisitions and disposals of shares and the thresholds to trigger a tender offer.

Attempts of directors or management to employ "anti-takeover" measures shall obtain prior approval at the shareholders' meeting in accordance with pre-specified rules, otherwise such anti-takeover measures shall not have binding effect on the company and the directors or management shall be personally liable to a third party acting in good faith and for value.

4. Transactions with related parties

Transactions between directors and management and the company or subsidiary company as well as material transactions such as the acquisition or disposal of assets of the company or subsidiary company shall obtain prior approval at the shareholders' meeting in accordance with pre-specified rules, otherwise such transactions shall be regarded as a material breach of the conflict of interest rules.

5. Issuance of securities

To support fund raising of new types of entities established under both Thai and foreign laws, any securities issuance, established in whatever form, shall receive approval from the SEC and disclose pre-offering and post-offering information, except when the issued securities are deemed to be risk-free such as treasury bills, government bonds, Bank of Thailand bonds, etc.

6. Enforcement of pledged securities

Pledged securities may be enforced through public auction or through a sale in the Securities Exchange of Thailand ("SET").

Supportive Mechanism for Effective Enforcement of Securities Laws

Major amendments with regard to supportive mechanism for effective enforcement of the securities law and suppressing of economic crimes are as set out below:

1. Securities companies are prohibited from prosecuting or engaging in unfair practices against whistleblowers who are company officers, employees or persons hired to work for the companies including consultants and auditors who, in good faith, provide the authorities with clues relating to unlawful acts under the securities law. Violations could be punishable by criminal sanctions.

2. Persons who provide information on insider trading or market manipulation shall, subject to certain conditions and exceptions, be entitled to a reward funded by the settlement fine in an amount not exceeding 30% of such fine.

3. The auditor of a securities company is required to report to the company's Audit Committee activities suspected of violating securities laws, and the company's Audit Committee shall report such activities to the SEC within a specified period of time.

4. The director, manager or any person responsible for the operation of the company could also be liable to criminal sanction for offenses committed by the company, unless it can be proven that such person has no involvement with the commission of offense by the company.

5. The SEC shall have the power to cooperate with foreign regulators in the areas of investigation and information exchange for the suppression of international economic crimes.