

THAILAND: A NEW MARKET FOR FOREIGN SHARES

While companies in Thailand and around the globe continue to seek new venues to raise capital, traditional ways of raising funds in domestic markets such as issuing shares and debt instruments are now increasingly supplemented by initiatives to raise funds from overseas, thus allowing the issuers of shares and debt instruments to tap into the wider global market. And from an investor's perspective, more investment options are available from which to choose for their own risk profile.

In a trend towards greater market liberalisation, Thailand has opened up as a venue for issuance and offering of foreign debt securities. Until recently, the issuance and offering of foreign equity-based securities was prohibited, except when offered only to limited groups of recipients, such as offering foreign securities to employees of the foreign issuer or its subsidiaries in Thailand under an employee stock option plan, or offering fully-paid ordinary shares to existing shareholders (i.e., rights offering).

Effective Dec 1, 2009, foreign equity-based securities (e.g., shares and warrants on shares) listed on a home exchange (foreign stock exchange) will be permitted to be listed on the Stock Exchange of Thailand (SET) if certain requirements are fulfilled. The benefits of this are at least twofold. First, Thai investors will have access to foreign blue-chip shares to be listed on the SET; and second, Thailand will no longer be only on the receiving end of global investment — world-class companies, regardless of whether they have operations in Thailand, can now view Thailand as a place to raise funds. At this stage, however, listing securities of non-listed foreign issuers on the SET, as a primary offering and listing, is still not permitted.

The Securities and Exchange Commission (SEC) requirements include:

- ◆ the home exchange is a member of the World Federation of Exchanges and



shares are listed on the main board;

- ◆ the home regulator is a member of the International Organisation of Securities Commissions (IOSCO) and a full signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information or other comparable memoranda of understanding;
- ◆ the foreign issuer has a contact person in Thailand;
- ◆ the value of shares to be issued in Thailand is within the Bank of Thailand's limit;
- ◆ the approval of home regulator or evidence that the issuance and offering of securities in Thailand does not breach any home exchange regulation is obtained.

In addition, SET requirements must also be fulfilled. The foreign issuer must:

- ◆ be a listed company on the home exchange for not less than three years;
- ◆ have market capitalisation in the top quartile of all listed companies on the home exchange, or not less than 10 billion baht;
- ◆ have market capitalisation in Thailand of not less than 300 million baht, or 5% of its registered capital, whichever is lower, or otherwise have proof that there will be sufficient trading volume and liquidity.

Foreign companies wishing to issue equity-based securities have to submit an application to the SET, and simultaneously file an application to obtain approval from the SEC and file a registration statement and draft prospectus to disclose information to the investing public (filing). If the SET is

satisfied that all qualifications are met, it will issue a Certification of Qualification for submission to the SEC. After the application, and all supporting documents and filing are completed, there will be a cooling-off period of at least 14 days. Once SEC approval and filing become effective, the shares can be offered for sale to the public through an underwriter(s), which must be completed within six months from SEC approval, and then listed on the SET.

The offering of existing shares by shareholders (as opposed to the offering of new shares) for listing on the SET is also allowed, provided that the foreign issuer has obtained pre-approval from the SET, and shall be subject to the same qualifications as the offering of new shares. The company must issue a written acknowledgement of such offering and provide representation that it will comply with all requirements, such as those concerning disclosure.

After the securities are listed, the foreign issuer must comply with its home exchange regulations such as submission of financial statements; rules for transactions with related parties; reporting on material transactions; reporting on shareholding of directors, management, and auditors; rules of takeovers, and so on.

Once foreign securities are listed on the SET, if the company wishes to issue new securities but does not wish such securities to be listed, it may do so by merely submitting an application and filing to the SEC. In addition, if the offering qualifies as private placement (i.e., the offering of securities is made to fewer than 50 investors, the value of the offering is less than 20 million baht, or the offering is made only to institutional investors), the filing requirement will be exempted.

By Yingyong Karnchanapayap, Attorney-at-Law, Corporate & Commercial Department, Tilleke & Gibbins International Ltd. Please send comments to Andrew Stoutley at andrew.s@tillekeandgibbins.com.