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Thailand's SEC Provides Legal Clarity with Equity Crowdfunding Regulations

Crowdfunding in Thailand has generally been regulated by the Securities and Exchange Commission (SEC), and this covered a narrow scope of crowdfunding activities, including offering newly-issued shares via “electronic systems or networks.” Recently, the SEC issued new regulations expanding the scope of permitted crowdfunding activities to include other parts of equity crowdfunding. SEC Notification Tor Jor. 21/2562 Re: The Offering of Securities for Sale through Crowdfunding Portals and related regulations came into force on May 16, 2019, and replaced the previous SEC notifications on crowdfunding. The new SEC crowdfunding notification expands previous restrictions, including allowing issuers to offer “plain vanilla” debentures as well as shares, and adjusting the specific restrictions on issuing securities to retail and non-retail investors.

Crowdfunding Portals

The new SEC crowdfunding notification defines crowdfunding portals as websites, mobile apps, or other similar electronic media developed for offering securities for sale. Crowdfunding portals must be incorporated in Thailand, must have a minimum paid-up registered capital of THB 5 million, and their systems must be ready for use upon applying to the SEC for approval to operate.

After receiving approval from the SEC, crowdfunding portals must operate within the scope of their license and comply with the standards and requirements of the notification. This includes an obligation to record information relating to the issuing of securities on the platform and keep that information for at least two years after the date of offering. Crowdfunding portals are also required to disclose transaction summary reports to the SEC.

Crowdfunding portals are responsible for complying with Know Your Customer procedures relating to their investors and must also assess each investor's knowledge and abilities regarding investment in shares and debentures. Crowdfunding portals must also provide investors with information about investment, including the benefits and risks of investing in shares and debentures, rights of cancellation, and information on the issuers.

Issuers

Under the new SEC crowdfunding notification, an issuer must not be listed on the Stock Exchange of Thailand, must be a company incorporated under Thai law, and must intend to use the proceeds of newly-issued shares and debentures to fund the company's operations, or for refinancing. Qualifying issuers will be exempt from licensing requirements; however, they must only offer securities

through one crowdfunding portal unless they receive approval from the SEC to do otherwise. Issuers must also file the results of offering crowdfunding securities with the SEC and must appoint a securities registrar.

Issuer compliance with SEC crowdfunding regulations is generally the responsibility of the crowdfunding portal on which the issuer is offering securities. Crowdfunding portals are responsible for screening issuers wishing to offer crowdfunding shares or debentures via the crowdfunding portal, in order to determine whether the issuer complies with the requirements under the SEC crowdfunding notification. If the crowdfunding portal discovers, or has reason to believe, that an issuer violates the provisions of the notification or other law, the crowdfunding portal must reject the issuer and inform the SEC of the violation immediately.

Investors

Non-retail investors include institutional investors, mutual fund companies and venture capital investors, angel investors, and other crowdfunding portals. The term “angel investors” refers to private individuals who either:

- ▶ have invested directly in shares for a period of at least one year, and (i) have net assets of at least THB 50 million, not including the property value of that person's residence, or (ii) have an annual income of at least THB 4 million; or
- ▶ have knowledge and skill relating to business operation or investment, experience assessing the value of business operators, or experience advising on business development

An issuer may not offer crowdfunding securities to more than 50 different angel investors and crowdfunding portals in any 12-month period.

Retail investors are individual investors who do not meet the criteria listed above. The value of crowdfunding securities offered by an issuer to a retail investor must be no more than THB 100,000 to each retail investor. The value of crowdfunding securities offered by an issuer to all retail investors must be no more than THB 20 million within 12 months of the first offering of crowdfunding securities, and the total value of crowdfunding securities that may be offered to individual investors starting from the date of first offering is capped at THB 40 million.

Conclusion

Thailand's embrace of crowdfunding and innovative crowdfunding platforms is a further strengthening of the increasingly active and profitable fintech sector in the country. While tech entrepreneurs had already been taking steps in the equity crowdfunding space, the SEC's actions have codified the process, aiming to facilitate grassroots financing through crowdfunding initiatives in a way that mutually benefits both entrepreneurs and their supporters (i.e., investors) as well as the platform operators who bring these groups together. The effect of this development will become clear in the coming years, but in principle it should smooth out challenges, remove uncertainty, and provide legal clarity for greater crowdfunding innovation in the country. 🇹🇭