



## Legal Alert

1 February 2023

*Experience the future of law, today*

### New SEC's regulation and guideline for IPO issuer on non-involvement in illegal businesses

Effective from 1 February 2023 onwards, the Securities and Exchange Commission (the "SEC") has issued the Notification of the Capital Market Supervisory Board No TorJor. 1/2566 Re: Application for Approval and Granting Approval for Offering of Newly Issued Shares (No.14) (the "Amended Notification") along with guidelines to supersede the ambiguous language on the requirement of "not being involved in an illegal business" under the Notification of the Capital Market Supervisory Board No. TorJor. 39/2559 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (as amended) (the "Offering Notification").

This Amended Notification can help ease the stringent standard for minor non-compliances of certain applicable laws to still be qualified for an approval for IPO since it will focus only on (i) serious offenses such as human trafficking, production of drugs or drugs dealing, or money laundering; and (ii) Operates in a manner that violates or is not in accordance with the provisions of law which may materially and adversely affect the business operation of the issuer.

With the above, the SEC has issued a guideline for compliance with the criteria for granting approval on IPO regarding the determination of the qualifications for non-involvement in illegal business of the issuer ("Guideline") to elaborate on such above 2 prohibited characteristics of the issuers as follows:

Criteria	Clarification / examples
1. The issuer must not be involved in <u>serious offenses</u> such as human trafficking, production of drugs or drugs dealing, or money laundering	<ul style="list-style-type: none"> <li>The intention is to cover "all serious offenses", not limited to only the specified offenses e.g., terrorism, etc.</li> </ul>

<p>2. The issuer must not operate in a manner that violates or is not in accordance with the provisions of law which may <u>adversely and materially affect</u> the business operation of the issuer</p>	<ul style="list-style-type: none"> <li>• Any non-compliance with laws (whether such laws are serious or not) that adversely and materially and adversely affect the business operation such as:             <ol style="list-style-type: none"> <li>(1) Lack of license for operations of the main business</li> <li>(2) The hotel, which is the main source of income of the company, encroaches the forest area causing a demolition of main buildings</li> <li>(3) A food factory having foreign workers without work permits</li> <li>(4) Manufacturing business in which most of the products are pirated</li> </ol> </li> </ul>
--	--

In consideration of materially and adversely affecting the business, the SEC may consider several factors which include but are not limited to assessing the **consolidated financial statements** for the following details:

- 1) If the negative impacts on the asset of the company or its subsidiaries are higher than 5% of the shareholder's equity, or higher than 10% of the current asset in case of the shareholder's equity is negative, calculated from the latest quarter financial statements, or
- 2) If the negative impacts on the income of the company or its subsidiaries are higher than 10% of the total income calculated from the latest 4 quarters of its financial statements.<sup>1</sup>

Other non-compliance with laws that do not adversely and materially affect the business operations will not disqualify the issuer, however, the issuer should disclose such matters in the caption "risk factors" of its prospectus (in which the guidelines have provided recommendation of disclosure) and if such non-compliance persists after the public offerings, the issuer must also disclose such information in the Annual Registration Statement

#### Deloitte's observation:

The Guideline that comes with Amended Notification has eased up certain stringent conditions for IPO and did not outright disqualify minor non-compliances. However, to distinguish whether non-compliance with laws on certain parts of the business could be a roadblock to the IPO, the legal due-diligence and assistance for disclosures of risk factors relating to potential risks associated with license and compliance with laws by a legal counsel before the IPO is needed.

-----  
<sup>1</sup> The issuer can also use the latest annual audited financial statements and the latest quarter financial statements for such calculation.

---

## 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](mailto:ppootranon@deloitte.com)

### Veerakorn Samranweth

Senior Managing Associate - Tax & Legal - Corporate

Tel: +66 (0) 2034 0000 Ext 17040

Email: [vsamranweth@deloitte.com](mailto:vsamranweth@deloitte.com)

### Onjira Kiatchalermkhun

Associate 2 - Tax & Legal - Corporate

Tel: +66 (0) 2034 0000 Ext 16677

Email: [okiatchalermkhun@deloitte.com](mailto:okiatchalermkhun@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](http://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.