



Legal Alert

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Private Placement by Private Companies in Thailand

From 1 November 2022 onwards, private limited companies are allowed to conduct private placement of shares and convertible bonds, in addition to allowance only to small and medium enterprises under the regulations issued by the Securities and Exchange Commission (“PP Regulation”).

What does it entail?

This regulation sets the new tone for private companies. Usually, the newly issued shares of a private company have to be offered only to its existing shareholders according to the Civil and Commercial Code (“CCC”). Following this PP regulation, a private company can then issue its new shares to new shareholders.

What is the key requirement and restriction?

The PP Regulation categorizes the eligible issuers into three groups, i.e., small, medium, and large enterprises; each of which is subject to different requirement and restriction. Typically, if they follow certain requirements, they can offer shares or convertible bond to (i) institutional investors includes directors and employees of the issuer and its subsidiaries, regardless of the number of investors or offering value; or to (ii) specific investors which shall not exceed 10 investors, and the total offering value shall not exceed THB 50 million at any point in time.

Requirement for eligible issuers

Eligible issuers	Manufacturing business (Only meets one of each criteria)*		Trade or service business (Only meets one of each criteria)*	
	Annual revenue (million Baht)	Number of employees (persons)	Annual revenue (million Baht)	Number of employees (persons)
Small enterprise**	not exceeding 100	not exceeding 50	not exceeding 50	not exceeding 30
Medium enterprise**	more than 100 but not exceeding 500	51 - 200	more than 50 but not exceeding 300	31 - 100
Large enterprise	more than 500	more than 200	more than 300	more than 100

Remark:

*To be eligible issuers, the issuers simply meet up with either: (i) annual revenue; or (ii) number of employees.

**The small and medium enterprise must register with the fundraising promotion project collaborated between the Securities and Exchange Commission ("SEC") and the Office of SMEs Promotion.

Eligible investors

Eligible issuers	Eligible investors	
	II and ESOP*	PP10**
Small enterprise	✓	-
Medium and Large enterprise	✓	✓

Remark: *II and ESOP means offering to institutional investors including directors and employees of the issuer and its subsidiaries. The total offering value and numbers of investors in this case is not limited under PP Regulation.

**PP10 means offering to specific investors which shall not exceed 10 investors, and the total offering value shall not exceed THB 50 million at any point in time (not including offering value and number of investors for II and ESOP).

Such private placement is deemed approval and not required to submit a prospectus, provided that the issuer must submit the factsheet in a prescribed form, transfer restriction (for convertible bonds), and other supporting documents to the SEC. After the offering, the issuer shall submit the sale report to the SEC within specific period. These tasks can be consulted with a legal advisor.

Red Flag in Practicality

As mentioned, CCC which is the general law governing a private limited company including the capital increase process requires the private limited company to issue new shares only to its existing shareholders. As such, the PP Regulation is in contrast with the CCC in this regard. In principle, the specific laws such as the PP Regulation shall supersede the general law which is the CCC in this case; however, there can be a problematic in terms of registration with the Ministry of Commerce. This would require the frequent practice and communication to be discussed with relevant authorities to familiarize with the new regime.

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