



## Legal Alert | Capital Markets

### SEC Regulatory Update: Changes in Private Placement Regulations and Implications for Listed Companies

Private placement (“PP”) refers to the offering of equity securities to a specific group of investors<sup>1</sup>. It enables businesses to secure direct funding from sophisticated investors such as institutional investors, private equity firms, and high-net-worth individuals, ensuring businesses achieve their funding targets. As PP offers certainty and efficiency compared to alternative methods like obtaining loan facilities or making public offerings of new shares, they are frequently used by listed companies to raise additional funds.

In an effort to streamline the overall process and enhance procedural efficiency of PP, the Office of the Securities and Exchange Commission of Thailand (“SEC”) has pushed forward the drafted bill – the Announcement of the Capital Market Supervisory Board No. TorJor. 28/2565 Re: Authorization of Listed Company to Offer Newly Issued Shares through Private Placement (“**CMSB Announcement No. TorJor 28/2565**”), which is set to become effective from **1 July 2023** onwards. The new regulations under the CMSB Announcement No. TorJor 28/2565 shall apply to all offerings of PP shares that obtain shareholders’ approval from July 1, 2023, onwards.<sup>2</sup>

This article aims to provide a summary of the previous issues related to the regulations governing the offering of PP shares by listed companies, SEC’s proposed amendment and the forthcoming changes for businesses.

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<sup>1</sup> According to Clause 9 of the CMSB Announcement No. TorJor 28/2565, the issuance of new shares with the below conditions shall be considered as offering of PP shares;

(i) Issuance of new shares for offering to not exceeding 50 specific investors within a 12-month period;  
(ii) Issuance of new shares with a value not exceeding THB 20 million within a 12-month period; or  
(iii) Issuance of new shares for offering to institutional investors.

<sup>2</sup> Clause 23, CMSB Announcement No. TorJor 28/2565

## Previous Regulations on Issuance and Offering of PP Shares

Under the current regulations in effect until July 1, 2023, SEC regulations pertaining to private placement shares can be categorized into two aspects – standard requirements and additional requirements.

As a standard requirement applicable to all types of PP shares offering, a listed company is required to (a) submit notice to summon shareholders' meeting at least 14 days in advance; (b) obtain approval from at least three-fourths of shareholders; (c) submit corporate documents (including minutes of the board of directors and minutes of shareholders' meeting) to the SEC; and (d) adhere to the relevant regulations, including information disclosure requirements on the Stock Exchange of Thailand (“SET”) and in the notice to summon shareholders' meeting before raising funds through PP.

The SEC imposes additional requirements on the offering of PP shares, which is varied depending on the pricing of PP shares, which can be categorized into; (i) floating price, where the shareholders meeting resolve to assign the board of directors to indicate the offering price in accordance with the market price at the time of offer (Floating Price) /market price; and (ii) fixed price.

In the case of (i) offering PP shares at a fixed price, (ii) offering remaining shares from a right offering at a fixed price, and (iii) other PP allocation/price determining conditions that do not fall within the aforementioned SEC-prescribed scenarios, SEC approval is required. On the other hand, offering PP shares at Floating Price does not required SEC approval – listed companies shall be deemed to have obtained approval from SEC provided that they have complied with the standard requirements outlined above.

In order to obtain formal approval from the SEC, a listed company is required to submit relevant documents and information for the SEC's review at least 30 days prior to the date of shareholders' meeting (referred to as the 'pre-process'). This regulation imposed by the SEC necessitates a minimum of two to three weeks to complete the PP certification process, thereby extending the funding timeline for businesses and contributing to inefficiency during urgent situations.

## About Us

### Capital Markets Practice Group

Praised by our clients for providing cutting-edge advice on complex securities and regulatory matters, our capital markets practice continues to represent many companies in their IPO transaction covering various sectors. We advise our clients on pre- and post-issue matters such as corporate restructurings, debt refinancing and liability management including a complete solution for evaluating capital market issues ensuring the correct set up for tax optimization through pre-IPO strategies.

## Regulatory Changes

The amendment outlined in CMSB Announcement No. TorJor 28/2565 entails several significant components, which we will discuss below, comparing them to the previous regulations stated in CMSB Announcement No. TorJor 72/2558.

Issues	Previous Regulations <i>CMSB Announcement No. TorJor 72/2558</i>	New Regulations <i>CMSB Announcement No. TorJor 28/2565</i>
<b>(i) SEC Approval Requirement</b>	<p>Under the previous regulations, a company was required to obtain approval from the SEC in the case of;</p> <ul style="list-style-type: none"> <li>(i) offering PP shares at a fixed price;</li> <li>(ii) offering remaining shares from a right offering (RO) at a fixed price; and</li> <li>(iii) other PP allocation/price-determining conditions which do not fall within the aforementioned scenarios prescribed by the SEC.</li> </ul>	<p><b>Under the new regulations, the requirement for the SEC approval is abolished.</b></p> <p>All methods of PP share allocation and pricing shall be deemed to have obtained SEC approval provided that the following requirements are complied;</p> <ul style="list-style-type: none"> <li>(i) submit notice to summon shareholders' meeting at least 14 days in advance with minimum particulars required by the SEC;<sup>3</sup></li> <li>(ii) obtain at least three-fourths of shareholder approval;</li> <li>(iii) adhere to relevant regulations, including information disclosure requirements on SET and in the notice to summon shareholders' meeting.</li> </ul>
<b>(ii) Independent Financial Advisor's ("IFA") Opinion</b>	<p>A company is not required to obtain IFA's opinion.</p>	<p>For <b>issuance of PP shares, which are considered material events, a listed company is required to obtain IFA's opinion.</b></p> <p>Material events include;</p>

<sup>3</sup> CMSB Announcement No. TorJor 28/2565

		<p>(i) the issuance of PP shares at a fixed price below market price;</p> <p>(ii) the issuance of PP shares that grant PP investors as shareholders with the most voting rights;<sup>4</sup> and</p> <p>(iii) the issuance of PP shares that may affect earnings per share (E/S) or control dilution exceeding 25 percent, based on the number of paid-up shares on the date of the board's resolution approving PP shares.</p> <p>The IFA's opinion report shall analyze the appropriateness of the price of PP shares, the rationale and benefits of offering shares to PP investors, the fund utilization plan, in comparison to the effects on shareholders, and an opinion as to whether shareholders should approve this allocation of PP shares.</p> <p>IFA's opinion is not required in case of the offering of remaining shares from a right offering (RO) or preferential public offering (PPO) to PP investors. The company may use the same IFA of IFA's opinion is required in other matters on the same occasion (e.g. filing for an asset acquisition or disposal).</p> <p>In the case of material PP, the SEC requires the company to submit a notice of the shareholders' meeting and IFA report through SEC's E-Submission. The SEC will review and suggest revisions (if any) within 5 business days from the completion of documents.</p>
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<sup>4</sup> Including connecting parties under Section 258, concert parties of the PP investor and connecting parties under Section 258 of the concert parties.

<b>(iv) Permission to allocate remaining RO and PPO Shares through PP</b>	A listed company is permitted to offer the remaining shares from right offering (RO) to PP investors.	A listed company is permitted to offer the remaining shares from right offering (RO) <b>and preferential public offering (PPO)</b> to PP investors.
<b>(V) the offering period in case of Floating Price</b>	The Board of Directors has to determine the offering price in accordance with the market price at the time of offer (Floating Price) by calculating the weighted average price prior to not exceeding three business days before the offering date. In other words, the PP offering at the Floating Price must be complete within three business days after the Board of Directors meeting date.	The Board of Directors has to determine the offering price in accordance with the market price at the time of offer (Floating Price) by calculating the weighted average price prior to not exceeding five business days before the offering date. In other words, the PP offering at the Floating Price must complete within <b>five business days</b> after the Board of Directors meeting date.

## Concluding Remarks

Following the implementation of CMSB Announcement No. TorJor 28/2565, we anticipate a more streamlined process for the issuance of PP shares in general cases. However, it is important to note that when issuing PP shares containing material substances, the SEC has replaced the approval process with the requirement of obtaining an IFA's opinion, which may result in significantly higher costs for the listed company. While the elimination of the SEC's approval process simplifies and increases the efficiency of the issuance of PP shares, it is debatable whether this regulatory simplification encourages business funding through PP from a commercial standpoint.

It is important to highlight that this change in PP regulation is relatively new and ongoing. We strongly advise companies to stay informed about any forthcoming changes in the SEC practice. The SEC retains the authority to disapprove, suspend, or terminate PP issuances that are deemed unfair to shareholders or lack sufficient information disclosure.

As your trusted partners, we are committed to keeping you informed about any additional action plan recommendations to navigate the evolving PP regulation and SEC practices in light of this recent development. For further information, please reach out to our Capital Markets Team or contact the authors directly.