

# ***DISCLOSURE MANUAL***

***LISTING AND DISCLOSURE UNIT  
LISTING AND DISCLOSURE DEPARTMENT  
THE STOCK EXCHANGE OF THAILAND***

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**Contents**

	page
CHAPTER 1 : Listed Company and The Regulations on Maintaining Status as Listed Company	1
CHAPTER 2 : Corporate Governance and Audit Committees	3
CHAPTER 3 : Guidelines on Disclosure of Information of Listed Companies	7
CHAPTER 4 : The Public Disclosure of Material Information	18
CHAPTER 5 : Capital Increase	24
CHAPTER 6 : The Acquisition & Disposal of Assets	32
CHAPTER 7 : Connected Transactions	39
CHAPTER 8 : Rules and Guidelines Regarding Takeovers of Listed Companies	44
CHAPTER 9 : Mergers of Listed Companies	47
CHAPTER 10 : Reports on Securities Holding	50
CHAPTER 11 : Delisting	52
CHAPTER 12 : Best Practice for Shareholder Meeting	61
CHAPTER 13 : Derivative Warrants (DWs)	64

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## CHAPTER 1

### **LISTED COMPANY AND THE REGULATIONS ON MAINTAINING STATUS AS LISTED COMPANY**

The Stock Exchange of Thailand (SET) is the institution under the Securities and Exchange Act B.E. 2535. The most important function of the SET is to ensure secure, liquid, fair and orderly securities trading at the Exchange for promoting the confidence to all investors and encouraging the investment of savings in the capital

The guidelines which will bring the SET to accomplish its objectives as prescribed above are

- Having the standard for approving the new listed company which has potential growth, good corporate governance and clear , transparent information disclosure for providing the sufficient information in making investment decision by investors.

- The listed company realize the importance of having good corporate governance system, the significant information disclosure that have or likely to have effect on the change in price of the firm's securities, investment decisions or the interests of the firm's shareholders to ensure that all shareholders and investors receive the timely , equal and same quality information for conversion that information to the appropriate market price.

#### **Regulations on maintaining status as listed company**

##### **1. Share Distribution**

The listed company shall maintain its qualification with respect to share distribution so that its ordinary shares shall be held by small shareholders in a number not less than 150 and such shareholders shall hold shares in aggregate not less than 15 percent of the paid-up capital of the listed company.

##### **2. Good Corporate Governance and Audit Committee**

To encourage the listed company has the good corporate governance system that will make the listed company has the quality management system , the transparent information disclosure and the high standard of performance which will effect on the confidence in capital market. The listed company shall provide a board of qualified audit committees which is composed of at least 3 members and at least 1 of the 3 members must be a person who has financial or accounting background. The members of audit committee must be appointed by the board of director of the company or the shareholder meeting. Moreover, the member of audit committee is the part of the board of director of the company and has duty to supervise the operation of a listed company under an appropriate guideline. Such members shall have the qualifications and scope of duties under the Notification of the Exchange Governing Qualifications and Scope of Work of Audit Committees.

In the case where the number of audit committees has become less than the number prescribed in the aforesaid Notification, the listed company shall appoint additional directors to meet the prescribed number within 3 months from the date on which the number of audit committees has become less than the prescribed number.

In the case of necessary cause rendering the listed company unable to appoint the audit committees within the period prescribed above, if the SET deems appropriate, the period for the appointment of such audit committees may be extended. However, such period shall not exceed 6 months from the expiry of such period prescribed above.

A listed company shall prepare and submit a list of audit committees and a scope of work of audit committees to the SET pursuant to the form as specified by the SET.

### **3. Management**

The listed company shall have the management and the person who have controlling power possess the following qualifications:

(1) They shall not possess any characteristics prohibited under the Notification of the Securities Exchange Commission concerning the management of the issuer.

(2) They shall not have violated any regulations, rules, notifications, orders, Board's resolutions, or listing agreements made with the SET as well as circulars to which the adherence is required by the SET, and such act may severely affect the rights and benefits or the decision of shareholders and investors, or the change in price of securities.

### **4. Internal Control**

The listed company shall establish an internal control system under rules prescribed in the Securities and Exchange Commission (SEC) Notification that are to ensure the good control environment, the appropriate risk assessment procedure, control activity, information system and communication and monitoring system.

### **5. Conflict of Interest**

The listed company and its subsidiary shall have no conflict of interest under rules prescribed in the SEC Notification that is the listed company and its subsidiary have no conflict of interest with the parent company, the subsidiary company, the associated company or the person who may have conflict of interest.

### **6. Auditor**

The listed company shall have an auditor approved by the SEC as its auditor.

### **7. Holding Company**

The listed company which operates business by shareholding in a core company shall maintain shareholding in such core company throughout the period it maintains the status of a listed company. The listed company may change the core company after a period of 3 years from the commencement date of trading of the securities of the listed company on the SET.

## **CHAPTER 2**

### **CORPORATE GOVERNANCE AND AUDIT COMMITTEES**

#### **INTRODUCTION**

The SET has always placed special emphasis on maintaining the highest standards of corporate governance among listed companies, especially the roles, functions and accountability of the members of each firm's board of directors. This objective aims to protect the rights and interests of all stakeholders and to ensure a listed company is operated transparently, efficiently and profitably. The Exchange's policy of encouraging listed firms to establish good corporate governance has resulted in a range of measurements and incentives being introduced in recent times.

The Stock Exchange of Thailand defines Corporate Governance as a set of structures and processes of the relationships between a company's board of directors, its management and its shareholders to boost the company's competitiveness, its growth and long-term shareholder value with taking into account the interests of other company stakeholders.

The principles of good corporate governance are in line with the philosophy of sufficiency economy initiated by His Majesty the King to ensure sustainable development. The philosophy of sufficiency economy emphasizes on equilibrium and flexibility together with careful, thorough, and moral application of knowledge. These are all basic concepts of good corporate governance.

Good corporate governance is an essential element of listed companies. It means that the company has efficient, transparent, and able to be audited management systems that create trust and confidence amongst its shareholders, investors, other stakeholders and all relevant parties. Good corporate governance is a mean to add a firm's value and to sustain its growth.

The Stock Exchange of Thailand (SET) has continuously supported listed companies to establish their good governance systems. The SET expects all listed companies' boards and management teams to develop their systems to be comparable with international standards. This will be of benefit to the growth of listed companies, the growth of Thai capital market and the sustainable development of the economy.

#### **The Principles of Good Corporate Governance for Listed Companies**

The principles and the recommended best practices are presented in 4 categories as follows:

1. Transparency
2. Integrity
3. Accountability
4. Competitiveness

**The Audit Committee** is another essential and important part of the SET corporate governance policies as it helps ensure the highest standards of best practices as well as the creditability and transparency of a company's financial reports. In addition to the appointment of independent directors, the SET Board of Governors approved the regulations concerning good corporate governance and audit committees by requiring all listed companies to establish an audit committee by 31 December 1999.

The SET has recently issued a Code of Best Practices for the directors of all listed companies and Best Practice Guidelines for Audit Committee to serve as guidelines for board members. The SET believes that managing companies, as a result of these guidelines, will help not just ensure higher ethical and professional standards, but also increase operational and management efficiency. To be in line with these guidelines, an audit committee and independent directors must review the company's practice regularly to maintain the standard. As for the code of best practices for directors of listed companies, the SET requires listed companies to disclose to the shareholders the compliance or the lack thereof, with explanation for any non-compliance. This information must be included in the corporate governance section of the annual reports, effective from 1999. The 1999 annual reports are to be submitted by April 2000.

### **AUDIT COMMITTEES**

An Audit Committee plays a crucial role in improving the standards of corporate governance and is an important tool for a listed firm's board of directors in managing the firm and its business operations to the highest possible international and professional management standards (ensuring higher efficiency and better control within the company). The audit committee is also a key factor supporting the integrity of a company's financial reporting. Accordingly, it helps protect directors by ensuring that critical financial issues have been subjected to appropriate review. An audit committee will also increase the efficiency of the internal control systems of a listed company.

### **QUALIFICATIONS OF AUDIT COMMITTEE MEMBERS**

The Audit Committee shall consist of not fewer than three independent non-executive outside directors. The members of the committee must be appointed by the Board of Directors or by a vote of the shareholders meeting. In case audit committee members are fewer than three, the listed company shall appoint additional directors to meet the prescribed numbers within three months.

Audit Committee members must have the following qualifications:

(1) Not holding shares exceeding 5 percent, including shares held by a related person, of paid-up capital of a listed company, its affiliated company, its associated company, or its related company.

(2) Be free of any present, direct or indirect, financial or other interest in the management and business of the listed company, its subsidiaries and associated companies and the listed company's substantial shareholders.

(3) Be free of any past (for a period of 1 year), direct or indirect, financial or other interest in the management and business of the listed company, its subsidiaries and associated companies, and the listed company's substantial shareholders. unless the board is satisfied that such relationships will not affect the member's independent judgment.

(4) Not be related to or a close relative of any executive director, executive officer or major shareholder of the listed company.

(5) Not acting as a nominee or representative of any director or major shareholder of the listed company.

(6) Be able to freely perform and give opinions, or report the result of their duties assigned by the board of directors without being controlled by the management or major shareholders or any other related persons.

#### **DUTIES AND RESPONSIBILITIES OF AUDIT COMMITTEES**

The Audit Committee is responsible for duties assigned by the board of directors and the board of directors is responsible for the company's operation to the public. The duties of the Audit Committee are as follows:

(1) Review listed company's financial reporting, in which the financial statement must be correct, sufficient, and credible.

(2) Ensure listed company has adequate and effective internal control systems.

(3) Ensure listed company comply with all the relevant regulations and laws

(4) Consider, select and recommend the appointment of the external auditor. + audit fees

(5) Ensure listed company discloses any activities that may lead to a conflict of interest.

(6) Issue an Audit Committee report to be disclosed in the listed company's annual report. The report must be signed by the chairman of the Audit Committee.

(7) Consider other matters as defined by the board of directors.

#### **Listed companies not meeting audit committee membership requirements within the time-limit**

In such cases, SET will:

1. Post an "NP" sign (notice pending) for three months from the day that the listed company has fewer audit committee members than required.

2. Post an "SP" sign (suspension) suspending trading of their securities, if, after three months of carrying the "NP" sign, the public firm still has not met the audit committee membership requirement.

3. Announce that the firm may be delisted [as stipulated in Clause 9(3) of SET's regulations regarding delisting of securities], and post an "NC" (noncompliance) sign on the firm's securities to warn investors of this, if, after three months of carrying the "SP" sign, the audit committee membership requirement is still not met.

4. SET may delist securities of the company if they do not meet SET's audit committee membership requirement within three months of the posting of the "NC" sign. SET will allow trading of securities for 30 days before delisting.

### **Circumstances affecting deadlines for appointment of audit committee members**

1. There are circumstances where the time-limit for appointing an audit committee member should be extended, e.g., where listed companies are in the process of:

- seeking an approval from authorities, e.g., Bank of Thailand, SEC, or Department of Insurance. If so, public companies should submit a copy of their application letter to SET.
- restructuring major shareholders, causing a large change in the composition of the Board of Directors. Listed firms should submit copies of related documents to SET.
- waiting for the firm's nominee to respond. Public companies shall tell SET the name of the nominee, date of contact, and when they expect a response. Listed companies shall also disclose to investors their timelines and plans for appointing an audit committee member.

2. There are circumstances where the time-limit for appointing an audit committee member will not be changed, e.g. where a listed company:

- has suffered significant losses due to economic recession or industry downturn, and they are unable to nominate an appropriate person to a directorship.
- is in the process of seeking approval from major shareholders to appoint a director.

### **Procedure for seeking a time extension for appointing audit committee members**

Listed companies that are unable to appoint a member to an audit committee, within three months of the day that they are found to have fewer than the required number of committee members, should submit a written explanation, together with supporting documents to SET, at least seven days before the deadline for appointment.

SET will consider the application and notify companies of the decision seven days of receiving the documents. In extending a deadline, SET may set to enhance corporate governance, and support the interests of shareholders.

**CHAPTER 3**  
**GUIDELINES ON DISCLOSURE OF INFORMATION OF LISTED COMPANIES**

In order to conduct an active, a fair and orderly market, the Stock Exchange of Thailand (SET) sees it necessary to require every listed company to make available to the public information necessary for informed investing on securities. Such information shall be correct, sufficient and timely. In addition, a listed company shall take reasonable procedures to ensure that all who invest in its securities enjoy equal access to such information. To comply with this fundamental principle, the SET sets forth the guidelines concerning disclosure in 6 clauses as follows:

**(1) Immediate Public Disclosure of Material Information**

The listed company is required to make immediate public disclosure of all material information concerning affairs of a listed company or its subsidiary, except in some exceptional circumstances.

**(2) Thorough Public Dissemination**

The listed company is required to release material information to the public in a manner designed to obtain its fullest possible public dissemination.

**(3) Clarification or Confirmation of Rumours and Reports**

Whenever a listed company becomes aware of a rumour or report, true or false, that contains information that is likely to have, or has had, an effect on the trading in the company's securities or would be likely to have a bearing on investment decisions, the company is required to publicly clarify such rumour or report as promptly as possible.

**(4) Response to Unusual Market Activity**

Whenever unusual market activity takes place in a listed company's securities, the company is expected to make inquiry to determine whether rumours or other conditions requiring corrective action in accordance with these guidelines exist. If, after the company's review, the unusual market activity remains unexplained, the company shall announce that there has been no material development in its business and affairs previously disclosed or, to its knowledge, no other reason to account for the unusual market activity.

**(5) Unwarranted Promotional Disclosure**

The listed company shall refrain from promotional disclosure information which exceeds that necessary to enable the public to make informed investment decisions. Such information includes:

- (a) inappropriately worded news releases;
- (b) public announcements not justified by actual developments in the company's affairs;
- (c) exaggerated reports or predictions; and

(d) flamboyant wording and other forms of over-stated or over-zealous disclosure activity which may mislead investors and cause unwarranted price movements and activity in the company's securities.

**(6) Insider Trading**

Insiders, e.g. directors or top executive officers, shall not trade on the basis of material information which is not known to the public. Moreover, insiders should refrain from trading, even after material information has been disclosed, for a period sufficient to permit evaluation of the information by investors

**1. Guideline on Immediate Public Disclosure of Material Information**

Immediate disclosure should be made of information about a company's affairs or about incidents or conditions in the market for the company's securities which meets any of the following standards:

(a) where the information is likely to have a significant effect on the price trading of any of the company's securities; or

(b) where such information is likely to be considered important by an investor, who applies analysis of information by analysts or experts in determining his choice of action; or

(c) where such information has or is likely to have effect on the interests of shareholders.

It shall be deemed the responsibility of a listed company to determine which information is material and must be disclosed under the above mentioned standards, as the listed company is in the best position to know which information is material to the company's business.

The listed company is not required to disclose the company's internal estimates or projections of its earnings or of other data relating to its affairs. If such estimates or projections are released, they should be prepared carefully, with a reasonable factual basis, and should be stated realistically, with appropriate conditions. Moreover, if such estimates or projections subsequently appear to have been mistaken, they should be promptly and publicly corrected.

Examples of a company's affairs or market conditions requiring prompt disclosure:

(a) a joint venture, consolidation or acquisition;

(b) the declaration or omission of dividends or the determination of earnings;

(c) a change in a share's par value or payment of dividend in shares;

(d) the acquisition or loss of a significant commercial contract;

(e) a launch of new product, significant development in a resource, technology, product or market or significant discovery concerning a natural resource;

(f) a change in control or a significant change in management, board of director and shareholder;

(g) a call of securities for redemption;

(h) the borrowing of a significant amount of funds relative to the financial status and performance;

- (i) the issuance of a significant amount of new shares for sale to the public or any person;
- (j) significant litigation;
- (k) the purchase or sale of a significant asset;
- (l) a significant change in capital investment plans;
- (m) a change in the company's objectives;
- (n) a significant labor dispute or disputes with sub-contractors or suppliers;
- (o) a tender offer for another company's securities; and
- (p) a significant alteration in accounting policy.

**Cases where a listed company is not required to promptly disclose material information :**

In the following circumstances a company may temporarily refrain from publicly disclosing material information, provided that complete confidentiality is maintained:

(a) When immediate disclosure would prejudice the ability of the company to pursue its corporate objectives.

Public disclosure of a plan to acquire certain real estate, for example, could result in an increase in the company's cost of the desired acquisition or could prevent the company from carrying out the plan at all. In such circumstances, as non-disclosure is more favourable, disclosure may properly be deferred to a more appropriate time.

(b) When the facts are in a stage of flux and a more appropriate moment for disclosure is imminent. Since successive public announcements concerning the same subject but based on changing facts may confuse or mislead the public.

In the course of a negotiation for the acquisition of another company, for example, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances a company need not issue a public announcement at each stage of the negotiations, describing the current state of constantly changing facts, but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at some other point, disclosure should then be made if the information is material.

(c) When the immediate disclosure will significantly benefit the company's competitor.

The disclosure of information which will amount to giving confidential information of the company to, and significantly benefit, the company's competitor, e.g., in a decision to launch a new product or new form of product. However, if the competitor can have such information from other sources, the disclosure shall be made immediately. In case of doubt, it shall be presumed that the disclosure must be made.

However, other laws or regulations may restrict the extent of permissible disclosure before or during a public offering of securities.

**Actions required when rumours occur while material information is being temporarily withheld:**

If rumours concerning such information should develop, immediate public disclosure must be made.

**Actions required when insider trading occurs while material information is being temporarily withheld:**

Immediate public disclosure of the information in question must be made if the company should learn that insider trading has taken or is taking place. In certain cases, where the trading is insignificant and did not have any influence on the market and sufficient actions are taken to halt the insider trading and prevent its recurrence, exceptions might be made which should be discussed with the SET. The SET's Listing and Disclosure Department can provide current information regarding market activity in the company's securities with which to help assess the significance of such trading.

Whenever material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement if necessary. During this period, the market action of the company's securities should be closely watched, since unusual market activity frequently signifies that a "leak" may have occurred.

**How to maintain confidentiality of material information being temporarily withheld:**

Material information that is to be kept confidential should be confined, to the extent possible, to the highest possible echelons of management and should be disclosed to officers, employees and others on a need to know basis only. Distribution of paperwork and other data should be held to a minimum. Where the information must be disclosed more broadly to company personnel, their attention should be drawn to its confidential nature and to the restrictions that apply to its use, including the prohibition of insider trading. It may be appropriate to require each person who gains access to the information to report all transactions of trading of the company's securities to the company. If legal counsels, auditors, or financial or public relations advisers or other outsiders involved, steps should be taken to ensure that they maintain precautions similar to that of the company personnel to maintain confidentiality.

Therefore, it is recommended that a listed company reminds its employees on a regular basis of its policies on confidentiality.

**2. Guideline on Thorough Public Dissemination****(1) The steps required for disclosure of material information:**

(a) **Timing of Public Disclosure:** Disclosure of material information must be made after the market closes. The permission period for information disclosure is 1 hour before the market opening at each trading session or after the daily market closes. Otherwise, when it is necessary to make disclosure of material information before or during trading hours, the SET expects a company to notify its Listing and Disclosure Department in advance of such disclosure if the matter is of a non-routine nature or is expected to have a substantial impact on the market for the securities of the company. The SET, with the benefit of all the facts provided by the company, will be able to consider whether a temporary halt in trading, pending an announcement, would be desirable. Such a temporary halt in trading is not a reflection on the company or its securities, but provides an opportunity for disseminating and evaluating the information released. Such a step frequently helps avoid rumours and market instability, as well as the asymmetric information.

Thus, in appropriate circumstances, the SET can often provide a valuable service to investors and listed companies by arranging for such a halt.

(b) Any public disclosure of material information to the public shall be by written announcement to the SET or other means prescribed by the SET. Such means are, for example, advertisement in a newspaper or sending information by electric media. Where the information is complicated, the SET may require that the company hold a meeting with securities analysts. In addition, the company may also broaden its distribution simultaneously to newspapers and other news media, such as the announcement in the company's offices or plants, and to trade publications. The information in question should always be given to the media in such a way as to promote publication by them as promptly as possible, i.e. by telephone, or in writing by hand delivery, in both cases on an "immediate release" basis. The company is cautioned that some of the media may refuse to publish information given by telephone until it has been confirmed in writing or may require written confirmation after its publication. In all cases, the company shall send all announcements to the public to the SET.

**(2) How to apply the guideline on thorough public dissemination to meetings with securities analysts, journalists, shareholders and others:**

The SET recommends that companies observe an "open door" policy in dealing with analysts, journalists, shareholders and others. However, under no circumstances should disclosure of material corporate developments be made on an individual or selective basis to analysts, shareholders or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described above.

The company shall avoid any appearance of preference to partiality in the release or explanation of information. Thus, at meetings with analysts or other special groups, representatives of the news media and newspapers should be permitted to attend.

### **3. Guideline on Clarification or Confirmation of Rumours and Reports**

#### **(1) Rumours or reports requiring clarification:**

A public circulation by any means, whether by an article published in a newspaper, by a broker's market activity report, or by word-of-mouth of information, either correct or false, which has not been substantiated by the company and which is likely to have, or has had, an effect on the price of the company's securities or would be likely to have a bearing on investment decisions must be clarified and confirmed by the company.

#### **(2) Response to be made to rumours or reports**

- In the case of a rumour or a report containing erroneous information which has been circulated, the company must make an announcement denying the rumour or the report and setting forth facts sufficient to clarify any misleading aspects of the rumour.

- In the case of a rumour or a report containing information that is correct, an announcement setting forth the facts should be prepared for public release.

In both cases, the announcement should then be publicly disseminated in accordance with the guidelines prescribed above.

- In addition, in the case of a false rumour or report, a reasonable effort should be made to bring the announcement to the attention of the particular group that initially distributed it.

In the case of a rumour or a report predicting future sales, earnings or other data, no response from the company is ordinarily required. However, if such a report is based on erroneous information, or is wrongly attributed to the company source, the company shall respond in the same manner as to other false rumours and reports. Moreover, if a rumour or a report contains a prediction that is clearly erroneous, the company shall issue an announcement to the effect that the company itself has made no such prediction and currently knows of no facts that would justify making such prediction.

### **4. Guideline on Response to Unusual Market Activity**

#### **(1) Substance of unusual market activity:**

Where unusual market activity, in price movement, trading activity, or both, occurs without any apparent publicly available information which would account for the action, it may signify trading by persons who are acting either on unannounced material information or on a rumour or a report, whether true or false, about the company. Most often, of course, unusual market activity may not be traceable either to insider trading or to a rumour or a report. Nevertheless, the market action itself may be misleading to investors, who are likely to assume that a sudden and appreciable change in the price of a company's securities must reflect a parallel change in its business or prospects. Similarly, unusual trading volume, even when not accompanied by a significant change in price, tends to encourage rumours and give rise to excessive speculative trading activity which may be unrelated to actual developments in the company's affairs.

**(2) Response required of a company when unusual market activity in its securities takes place:**

First, the company should attempt to determine the reason for the market activity, by considering in particular:

(a) whether any information about its affairs which would account for the activity has recently been publicly disclosed. If the company determines that the market action results from material information that has already been publicly disseminated, generally no further announcement is required. However, if the market activity indicates that such information may have been misinterpreted, it may be helpful, after discussion with the SET, to issue a clarifying announcement ;

(b) whether there is any information of this type that has not been publicly disclosed (in which case the unusual market activity may signify that a "leak" has occurred); If the market activity results from the "leak" of undisclosed information, the information in question must promptly be publicly disseminated ;and

(c) whether the company is the subject of a rumour or a report.

If the market activity indicates that such information may have been misinterpreted, it may be helpful, after consult with the Exchange, to issue a clarifying announcement.

If the market activity results from the "leak " of undisclosed information, the information in question must promptly be publicly disseminated.

If the market activity results from a false rumour or a report, the SET's guideline on correction of such rumour and report should be complied with.

If the company is unable to determine the cause of the market activity, the SET may suggest that the company make a public announcement to the effect that there have been no undisclosed developments affecting the company or its affairs which would account for the unusual market activity.

**5. Guideline on Unwarranted Promotional Disclosure**

Disclosure activity beyond that necessary to inform investors and explicable essentially as an attempt to influence securities prices is considered to be unwarranted and promotional. The distinction between legitimate public relations activities and such promotional activity is one that must necessarily be drawn from the facts of a particular case.

The following are frequent earmarks of promotional activity:

(1) a series of public announcements unrelated in volume or frequency to the materiality of actual developments in a company's business and affairs;

(2) premature announcement of products still in the development stage with unproven commercial prospects;

(3) promotions and expense-paid trips, or the seeking out of meetings or interviews with analysts and financial writers, which could have the effect of unduly influencing the market

activity in the company's securities and are not justified in frequency or scope by the need to disseminate information about actual developments in the company's business and affairs;

- (4) press releases or other public announcements of a one-sided or unbalanced nature; or
- (5) company or product advertisements which in effect promote the company's securities.

## **6. Guideline on Insider Trading**

### **(1) Definition:**

(a) "Insiders" means all persons who come into possession of material inside information before its public release. The insiders for the purposes of the SET's disclosure guideline are such persons as controlling shareholders, directors, officers and employees, including outside attorneys, auditors, investment bankers, public relations advisors, advertising agencies, consultants, and other independent contractors. The insiders include spouse, father, mother child, siblings, and those under the control of insiders as well as persons induced by such persons and persons who come into possession of material inside information.

(b) "Inside information" means the information which has not been publicly released and which is intended for use solely for a corporate purpose and not for any personal use and which the company temporarily withholds.

(c) "Insider trading" refers not only to the purchase or sale of a company's securities, but also the purchase or sale of warrants on shares and securities convertible into capital shares. Insider trading is trading made by a person who has any beneficial interest, direct or indirect, in such trading securities, regardless of whether he makes the trading in his own name.

Insider trading means to include the disclosure of inside information to the public whereby outside persons can trade on the company's securities by depending on the non-disclosed information.

### **(2) Insider Trading after the release of material information:**

How soon after the release of material information the insiders may begin to trade depends both on the rapidness and thoroughness of dissemination. In addition, following dissemination of the information, insiders should refrain from trading until the public has had an opportunity to evaluate it thoroughly. In the case of disclosure of uncomplicated information where the effect of the information on investment decisions is readily understandable, as in the case of earnings, the required waiting period will be shorter than where the information is complicated and must be interpreted before its bearing on investment decisions can be evaluated. The waiting period is, therefore, dependent on the circumstances. The SET recommends that, under the guideline on thorough dissemination of information, insiders should wait for at least 24 hours after the general publication of the release has been adequately disseminated. Where publication is not so widespread, a minimum waiting period of 48 hours is recommended. Moreover, the listed company should prohibit of insider trading before financial statement , financial status and operating result dissemination.

**(3) Procedures to be taken by listed companies to prevent improper insider trading:**

Listed companies should require its directors, officers, employees and other insiders to report their purchases or sales of the company's securities to prevent trading by using inside information, and to avoid any question of the propriety of insider purchases or sales. One such procedure might require corporate insiders to restrict their purchases and sales of the company's securities to periods following the release of annual statements or other releases setting forth the financial condition and status of the company.

**PENAL PROVISION**

By virtue of Section 241 of the Securities and Exchange Act, it is stated that, "In the purchase or sale of securities which are listed in the Securities Exchange.....no person shall purchase or sell securities.....by using information material to changes in the prices of securities which has not yet been disclosed to the public and to which information he has access by virtue of his office or position.....", provided the penal provision under Section 296 of the Act, stating, "Any person who contravenes Section 241 shall be liable to imprisonment for a term not exceeding 2 years or a fine not exceeding 2 times the benefit received or which should have been received by such person as a result of such contravention but such fine shall be not less than 500,000 baht or both."

**Content and Preparation of a Public Announcement**

**1. Minimum Requirements of the SET**

The content of a press or other public announcement is as important as its timing. Each announcement should:-

- (1) be factual, clear and succinct;
- (2) contain sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the company;
- (3) be balanced and fair. Thus, the announcement should avoid:-
  - (a) omission of important unfavourable facts, or the slighting of such facts, e.g. by "burying" them at the end of a press release;
  - (b) presentation of favourable possibilities as certain, or as more probable than is actually the case;
  - (c) presentation of projections without sufficient qualification or without sufficient factual basis;
  - (d) negative statements phrased so as to create a positive implication.
  - (e) use of promotional jargon calculated to excite rather than to inform.
- (4) avoid over-technical language, and should be expressed to the extent possible in language comprehensible to the layman;

(5) explain, if the consequences or effects of the information on the company's future prospects cannot be assessed, why this is so; and

(6) clarify and point out any reasonable alternatives where the public announcement undertakes to interpret information disclosed.

## **2. Preparation of Announcements.**

The following guidelines for the preparation of announcements to the SET or the public should help companies to ensure that the content of such announcements will meet the requirements prescribed above:-

(1) Every announcement should be either prepared or reviewed by a company official having familiarity with the matters about which disclosure is to be made, and a company official familiar with the requirements of the SET, as well as any applicable provisions of the laws governing securities and exchange.

(2) Since skill and experience are important to the preparation and editing of accurate, fair and balanced public announcements, the SET recommends that a specific group of individuals within the company be given this assignment on a continuing basis. Since a press announcement usually must be prepared and released as quickly as possible, however, the group charged with this assignment should be large enough to handle problems that arise suddenly and unexpectedly.

(3) Review of press releases and other public announcements by legal counsel might be desirable and necessary, depending on the importance and complexity of the announcement.

### **Authorized persons to report the listed company information**

Since the listed company has the responsibility to comply with the rules and regulations of the SET and disclose the material information if such information is likely to affect the interests of the shareholders, likely to be important for investment decisions or likely to have a significant effect on the market price of the securities and other SET 's requirement information , the listed company is required to appoint two high ranking officers as authorized persons to communicate with the SET regarding information disclosures by the firm. At least one of the two authorized persons must be a director of the company. This should enhance cooperation between the SET and listed companies and help ensure accuracy and reliability of any disclosed information.

When both authorized persons are not available for contact, the company may temporarily appoint a deputy and indicate the period of such responsibility. In the case of changing authorized person regarding information disclosure, the company is required to inform to the SET at least 7 days in advance before the end of such authorization together with appointment the new authorized person, exception of the company cannot know of such changing in advance, the company is required to promptly inform to the SET.

In addition, the company should assign a company official to continuously report the other information which the SET requires to enhance cooperation between the SET and the

company and help ensure accuracy, completeness, and promptness of any disclosure. The general qualifications of the persons who have the duty regarding information disclosure should be as follows:

1. Understand the principles for information disclosure of the listed company and the importance of information disclosure to the shareholders and general investors.
2. Understand the intention of the requirements of the SET as well as the applicable provisions of the law on securities and exchange.
3. Have skills and experience in preparation and editing of accurate, fair and unbiased public announcements
4. Have the ability to handle problems that arise suddenly and unexpectedly.

**CHAPTER 4**  
**THE PUBLIC DISCLOSURE OF MATERIAL INFORMATION**

The disclosure of the material information that listed companies are required to inform the Exchange can be classified into two categories as follows:

1. Periodic Reports
2. Non-Periodic Reports

**1. PERIODIC REPORTS**

A listed company is required to prepare and submit certain material information within a specific period under the Securities and Exchange Act (1992), Section 56, as follows:

	Filing period after the accounting period ends.
1.1 Audited annual financial statements (Submission of Q4)	3 months
Audited annual financial statements (No submission of Q4)	60 days
1.2 Reviewed quarterly financial statements	45 days
1.3 Annual report	110 days
1.4 Disclosure report on additional information (Form 56-1)	3 months

If the end of such period falls onto holiday, the deadline will be postponed to the following business day. Companies with different accounting periods shall consistently follow the same practice.

**1.1 Yearly Financial Statements**

A listed company has to prepare the required financial statements in line with the procedures specified in the SEC notification and file the original reports, along with 1 copy, with the SEC (Voluntary for English version) and send a copy of each Thai and English version to the SET within three months from the end of accounting period. Such financial statements also have to be disseminated electronically via the SET disclosure system.

**1.2 Quarterly Financial Statements**

A listed company has to prepare the required financial statements in line with the procedures specified in the SEC notification and file the original reports, along with 1 copy, with the SEC (Voluntary for English version) and send a copy of each Thai and English version to the SET within 45 days from the end of accounting period. Such financial statements also have to be disseminated electronically via SET disclosure system.

**Other requirements:**

In cases where the results of business operations in the profit and loss statements filed with the Exchange for the current year vary more than 20 percent from that of the same period for

the preceding year, the listed company must give written clarification of the variation at the time of filing the financial statements.

**Actions to be taken by the Exchange if a listed company is unable to file a financial statement on time**

1. An “SP” (Suspension) sign will be posted immediately against the company’s securities from the expiration date until the firm submits a complete and accurate financial statement to the Exchange and SET will publicize the delay of the submission of financial statement at the end of each month.

2. If a listed company fails to submit any of the required financial statements for a period longer than 180 days, the SET will announce the possible delisting of that company’s securities and post an “NC” (Non-Compliance) sign on the company’s securities to warn investors of this. Both “SP” and “NC” signs will remain for another 180 days, or until the company has submitted the required financial statements, whichever comes first. If the company has not submitted its financial statements after 180 days following SET’s delisting warning with post NC sign, the SET will delist its listed securities and will allow its securities to be traded for 30 days before delisting. A listed company can eliminate the causes of possible delisting by submitting the required financial statements as soon as possible and also submitting its financial statements within the specified time for two consecutive periods and the auditor does not express qualified opinion, adverse opinion, or disclaimer of opinion.

**1.3 Annual Reports**

A listed company must also prepare and submit its annual report to the Securities and Exchange Commission (SEC) and send 4 copies to the Exchange, including 4 copies of CD-ROM (If any). The details of this report must be in accordance with the disclosure report form (Form 56-2) as prescribed by the office of the Securities and Exchange Commission (SEC). The annual reports must be filed within 110 days from the end of accounting period together with an annual general meeting notice .

**1.4 Disclosure Reports on Additional Information (Form 56-1)**

A listed company must also prepare and submit a disclosure report on additional information to the Exchange. The details of this report must be in accordance with the disclosure report form for additional information on the issuing company (Form 56-1) as prescribed by the office of the Securities and Exchange Commission (SEC). A listed company shall file the original reports, together with 1 copy, with the SEC and send 4 copies to the SET within three months from the end of accounting period. Such reports also have to be disseminated electronically via SET disclosure system.

## 2. NON- PERIODIC REPORTS

### 2.1 The Immediate Public Disclosure of Material Information

A listed company must disclose all necessary and relevant information concerning its affairs that may affect the rights of shareholders and their investment decisions or may lead to a significant change in the price of its securities. A written notice must be submitted on the date on which any such incidents occur, at least one hour before each securities trading session or at the end of the day's trading at the Exchange. In cases where a listed company fails to submit the required information within the specified period, the listed firm shall submit it at least one hour before the first trading session, or before 09.00 a.m., on the following trading day. Some examples of incidents requiring immediate disclosure are:

- (1) The company suffers serious damage;
- (2) The company ceases operating all or part of its business;
- (3) The company alters its objectives or the nature of its business;
- (4) The company enters into an agreement entrusting other persons with power in whole or in part in the management of the company;
- (5) The company takes over another company or is taken over according to Section 247;
- (6) Capital Increase and Decrease.
- (7) Dividend Payment.
- (8) Merger and Acquisition.
- (9) Change in Par Value.
- (10) The Board of Directors resolves to fix a date for a shareholders' general meeting, whether ordinary or extraordinary. The report submitted to the SET with respect thereto must also include an agenda for the proposed meeting.
- (11) The Board of Directors resolves to fix a date for the closing of the company's share register, or a date on which rights of any kind will be conferred to shareholders.
- (12) A listed company or its Board of Directors resolves to increase its share capital, or to allot new shares to be issued in connection with an increase in share capital.
- (13) A listed company issues new securities, or takes any action which affects the rights of the holders of any convertible securities, or affects the rights to subscribe to new shares of holders of any securities of the listed company.
- (14) A listed company takes any action, or issues new securities with any condition which affects the redemption, cancellation or maturity of listed securities in whole or in part. In such a case, a listed company must notify the SET not less than 30 days prior to such redemption, cancellation or maturity.
- (15) A listed company makes any change with respect to the rights of holders of its debt securities convertible into shares or exchangeable for shares, as well as any other material change,

or cancels collateral or defaults in payment with respect to debt securities or debentures listed on the SET.

(16) A listed company or its parent, experiences any change of major shareholders that affects control over the listed company.

(17) A listed company is granted, or loses, a significant commercial contract.

(18) A listed company or its subsidiary is engaged in a transaction involving the acquisition, or disposition of assets and a connected transaction under the terms of the relevant SET notification.

(19) A listed company or its subsidiary acquires or disposes of an investment in another company which makes the other company become, or cease to be, a subsidiary of the listed company, or a subsidiary of the subsidiary of the listed company.

(20) A listed company or its subsidiary enters into, or terminates, a joint venture with another company, where the investment is ten percent or more of the paid up capital of the joint venture company.

(21) A listed company or its subsidiary develops a significant new product, makes significant developments with respect to resources, technology, products, marketing practices or a significant discovery of natural resources.

(22) A listed company or its subsidiary borrows money or issues debt instruments in an amount which may have a significant impact on its existing financial status and performance.

(23) A listed company or its subsidiary is involved in a significant dispute which affects the operations of the listed company. For example, a labour dispute or a dispute with a subcontractor or supplier.

(24) A listed company or its subsidiary is engaged in a significant legal dispute.

(25) A listed company or its subsidiary materially changes the intended use of its capital investments.

(26) A listed company or its subsidiary lists its securities on another stock exchange, or discloses information about the listed company's, or its subsidiary's, securities that are listed on another stock exchange.

(27) A listed company or its subsidiary makes a significant change in its accounting policies.

(28) A listed company or its subsidiary terminates its business and is liquidated.

(29) A listed company or its subsidiary has an independent appraiser value its major assets or, as the case may be, its subsidiary for the purpose of making a disclosure to its shareholders or general investors, in which case the listed company must notify and submit the appraisal report to the SET.

(30) The Board of Directors' resolution regarding the stock repurchase or the sale of repurchased stocks complies with Public Limited Companies Act.

(31) Something occurs that impacts, or may impact, upon the interests of securities holders or their investment decisions, or the price of the securities of a listed company.

### **2.2 Report within three days**

Information disclosure within three days is required when any of the following incidents occur:

1. There is a change in the composition of a listed company's Board of Directors. In such a case, a listed company must submit the resumes of the newly appointed directors to the Exchange.
2. There is a change in a listed company's memorandum of association or articles of association except for an amendment to the memorandum of association with respect to a matter of immediate reports.
3. A listed company relocates its head office.
4. A listed company, or its subsidiary, changes its auditor.
5. A listed company changes its securities registrar or changes the location of its securities registrar.

When a change under (1), (2) or (3) has been registered with the Partnerships and Companies Registrar, a listed company must furnish evidence of such a registration with the Exchange within seven days of the date on which the Partnerships and Companies Registrar effects such a registration.

### **2.3 Report within 14 days**

A listed company shall report documents to the SET within 14 days as follows:

1. A copy of the list of major shareholders or the first ten major shareholders as of the date of an ordinary general meeting of shareholders, and as of the date of the closing of the share register.
2. the minutes of an ordinary general meeting or extraordinary general meeting of shareholders.
3. a report on the distribution of shares in the form prescribed by the Exchange.

A listed company shall also report the date of the closing of its share register, or the date of conferring any rights to shareholders, to the Exchange at least 14 days in advance.

The closing of a share register shall commence at 12.00 noon on the date of closing the share register.

In cases where a listed company changes the date for closing its share register, or other dates for conferring rights to shareholders, from the dates which have been reported to the Exchange, the listed company must notify the Exchange of the change at least seven days prior to the reported date for closing its share register, or the date for conferring rights upon shareholders.

**Penalty provisions**

By virtue of Section 274 of the Securities and Exchange Act, any listed company that fails to comply with Section 56 and Section 57, or delays the submission of financial statements, annual reports and Form 56-1 shall be liable to a fine not exceeding 100,000 baht, and a further fine not exceeding 3,000 baht for each day the contravention continues.

## **CHAPTER 5**

### **CAPITAL INCREASE**

#### **INTRODUCTION**

One foremost objective to become a listed company on a stock exchange is to raise funds from the public for business expansion. Since an increase in capital has an effect directly on the interests of shareholders as well as on the price of a company's securities, the SET, therefore, requires listed companies to disseminate information of the capital increase for shareholders and investors to support their decision making on investment. The firms are also required to periodically report the utilization of capital.

According to the Notification of the SET re: rules, conditions and procedures governing the disclosure of information in respect of capital increases of listed companies, listed companies have to report the increase in capital, together with a capital increase report form, within the day of the board of directors' resolution or before 9.00 a.m. on the following business day.

Significant information included in the capital increase report form comprises of:

- name and location of the listed company;
  - date and serial number of the meeting of the board of directors of the listed company which passes the resolution approving the allotment of new shares;
  - details of the allotment of new shares which shall include categories of shares, existing paid-up capital and additional capital to be paid-up, method of allotment, the number of shares allotted, ratio and price;
  - period for the closure of the share register to suspend the share transfer or the date of determination of the names of shareholders entitled to subscribe for the new shares;
  - period for subscription and payment for the new shares;
  - objectives of the capital increase and plans for utilization of money received from the capital increase in detail as set forth in the report on the capital increase;
  - benefits which the listed company will receive from the allotment of new shares;
  - dividend policy and right for the new shares to receive dividends; and
  - other details necessary in support of the decision making on investment in the shares of the listed company.
- other information, e.g., approval from certain government agencies, i.e., banks, finance companies and security companies, or other benefits to the firm and its shareholders such as dividends which are tax-exempted.

In addition to information disclosure, listed companies shall follow these procedures:

## **1. Rights Offering**

When a listed company allots new shares to its existing shareholders, the firm must prepare and send written notice to its shareholders informing the allotment of new shares and the entitlement to subscription at least 5 business days prior to the subscription and payment period. Besides, the length of the subscription and payment period must last at least 5 business days.

### **Information in the notice of shares allotment shall include:**

- summary of the type of business and nature of main operation of the listed company and/or its subsidiaries at present in brief, stating characteristics of main products or services, environment of industry and competition, production, marketing and distribution as well as assets of the company and its substantial subsidiaries;

- structure of shareholders' equity and history of capital increase during the past three years;

- information regarding management and the 10 largest major shareholders;

- information regarding affiliated companies, subsidiaries and associated companies (if any), stating type of business and nature of operations, paid-up capital, proportion of shareholdings, value of investment and other kinds of relationship (If any);

- history of dividend payment for the past three years; and

- comparative financial information for the past three years of the listed company and consolidated financial statements (if any).

## **2. Public Offering/ Private Placement**

When a listed company allots new shares by means of public offering or so-called private placement for which approval from the Office of the Securities and Exchange Commission (SEC) is required, the firm must file 5 copies of their prospectus with the Exchange at least 3 business days prior to the subscription and payment period.

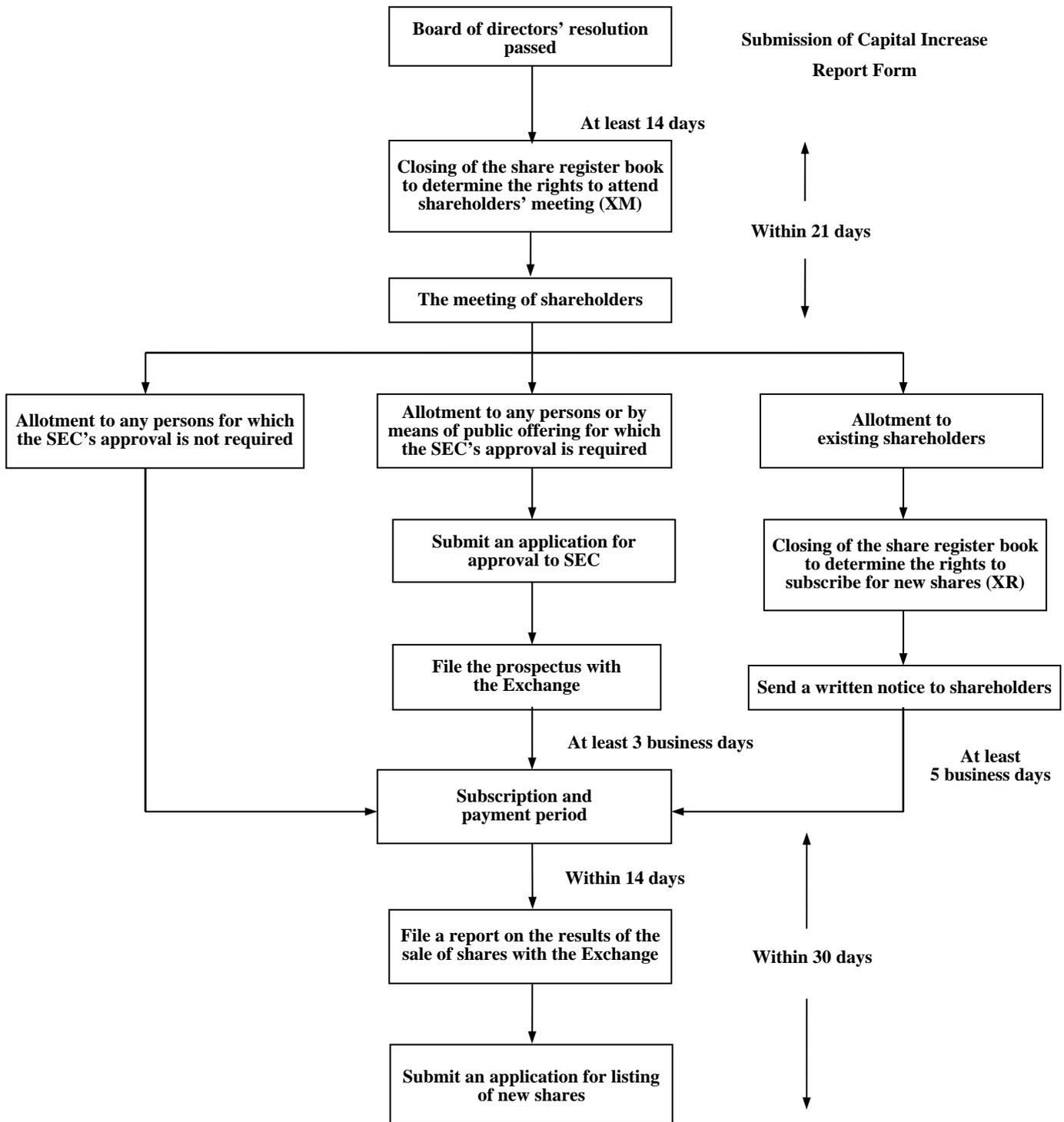
In addition, the Exchange requires listed companies to file a report on the results of the sale of shares within 14 days from the end of the subscription and payment period. The firms must also submit a report on the utilization of increased capital every 6 calendar months or within 30 days from the end of December and June until the whole amount of the increased capital has been utilized. If the operations under the projects of the listed company, due to any reason, do not accord with the specified plans, the listed company shall report to the SET the facts, causes and effects to the listed company immediately when such event occurs. In this regard, the SET may instruct the listed company to submit additional reports or documents for disclosure to the general public.

**APPLICATION FOR LISTING OF ADDITIONAL SHARES**

With reference to the Notification of the SET re: rules, conditions and procedures governing the listing of ordinary or preferred shares issued for capital increase, it is aimed to increase liquidity of a company's securities, to trade the new shares on the exchange shortly, and to ensure equivalent qualifications to those previously listed on the Exchange. The said notification can be summarized as follows:

1. Listed companies must file an application for listing of new shares within 30 days from the closing date of the subscription and payment period.
2. The SET shall conclude the consideration of listing the shares issued for the capital increase within 7 days from the day the SET has fully received the documents and evidence from the listed company.
3. The new shares must be equally qualified as those previously listed on the Exchange.
4. The Exchange may decline to approve the listing of new shares if a listed company fails to comply with the rules and regulations of the SET, e.g., the regulation concerning the capital increase or the application for listing of new shares, the regulation concerning the acquisition and disposal of assets, and the regulation concerning the connected transactions.

# Procedures for Capital Increase of Listed Company



## **CAPITAL INCREASE BY OFFERING TO EXISTING SHAREHOLDERS TRANSFERABLE SUBSCRIPTION RIGHTS: TSR**

### **PRINCIPLES**

This is to add more alternatives to shareholders and investors whether to exercise their rights to subscribe for new shares. It also encourages liquidity of companies' securities and assists listed companies to proceed with fund raising as needed. The SET, therefore, deems appropriate to prescribe regulations on capital increase by offering transferable subscription of rights (TSR) to existing shareholders in order for listed companies to be used as guidelines on information disclosure regarding the issuance of TSR.

**DEFINITION :** *Transferable Subscription Rights (TSR)* is an instrument which a listed company issues to its existing shareholders in accordance with the amount of shares held by each shareholder. This is to give such shareholders or the transferees of such instrument to use as evidence for the exercise of rights to purchase increased shares of a listed company, whereby such right shall be in respect of the amount of shares held by each shareholder.

All in all, TSR is an alternative for listed companies to raise funds from its existing shareholders. This will encourage liquidity of securities which is of benefit to shareholders and investors. Without TSR, when listed companies announce the allotment of increased shares to existing shareholders, or the Right Offering (RO), whereas the shareholders would like to give up their rights, they either do not exercise their rights or sell their shares before the XR sign is posted. On the other hand, if listed companies decide to raise funds by means of TSR, their existing shareholders will have more alternatives. That is, shareholders can whether or not to exercise their rights to subscribe for new shares. In case of waiver of rights, shareholders can sell their TSR on the Exchange.

### **GUIDELINES ON LISTING OF TSR ON THE SET**

#### **1. Qualifications of an issuer**

Any listed company willing to increase its capital may offer TSR to its existing shareholders except the following:

- Companies in the process of resolving financial status and operation, with possibility of delisting as informed by the SET; or
- Companies in the period during which its securities are suspended from trading causing serious effects on the rights of shareholders; or
- Companies in rehabilitation under the bankruptcy law.

These companies whose securities are not liquid are deemed not necessary to issue TSR as regular listed companies.

## **2. Qualifications of TSR**

- 2.1 Exercise ratio shall be one unit of TSR per one share.
- 2.2 TSR is offered only to existing shareholders.
- 2.3 Trading period is not less than seven business days.
- 2.4 Term of TSR is not more than two months.

## **3. Terms and conditions for issuance and offer of TSR**

3.1 A financial advisor must be appointed in order to prepare complete and sufficient information for shareholders.

3.2 Information regarding the capital increase, as appeared in the registration statement or prospectus, must be sent to shareholders within 7 days from the closing of the share register book, together with one copy to each broker and five copies to the SET.

## **4. Fees**

All fees are waived for TSR including application fee, initial listing fee and annual fee.

## **BENEFITS OF TSR**

### **1. Benefits to existing shareholders**

Existing shareholders can receive the benefits pertaining to their rights even though they do not exercise them, that is:

- Existing shareholders can get money faster by selling TSR as compared to subscribing to new shares and later sell them on the exchange to get the money.
- In case that existing shareholders cannot afford the subscription to new shares or do not want to exercise their rights, they can sell their rights on the exchange and receive the money. This help protect their rights in a sense that they do not need to seek for funds to purchase new shares, e.g., by borrowing which would add more costs on the principals as well as the interests.

### **2. Benefits to foreign investors**

TSR will solve problems for foreign investors from certain countries who have limitations on subscription to new shares in a sense that they can sell TSR on the exchange.

### **3. Benefits to listed companies**

- TSR tends to attract both domestic and foreign investors to invest in a listed company since investors will have more flexibility in trading the securities.
- TSR assists listed companies to proceed with fund raising as needed.

### **4. Benefits to the capital market**

- More channels to obtain the benefits by trading TSR.
- Increase in liquidity of securities since any person other than shareholders can have an opportunity to subscribe to new shares at lower costs than purchase shares on the exchange.

- Enhancement of investors' confidence due to the code of practice for listed companies being in line with international standards.

## **RECOMMENDATIONS**

In order to ensure the efficiency and to reduce frustration of the process of TSR issuance, listed companies should follow the following guidelines:

1. When listed companies decide to offer increased shares to existing shareholders, they should take TSR into consideration. Listed companies may consider setting up policy of the board of directors or of shareholders on offering TSR to shareholders on a regular basis. This is of benefit to shareholders as well as listed companies because TSR is a good mechanism for fund raising.

2. Listed companies should clearly specify, together with the submission of the board of directors' resolution, details about capital increase, conditions, offering price, subscription and payment period, including the closing date of the share register book to determine the rights to subscribe to increased shares.

3. Listed companies should credit the entire amount of TSR to the Scriptless System.

- Should shareholders have trading accounts with brokers, brokers shall send a name list to TSD in order to credit TSR into their client accounts. This is a regular procedure for the Scriptless System.

- Should shareholders have no trading accounts with brokers, TSD will open a new temporary account for them. When they would like to sell their TSR, they can do it via brokers by transferring TSR from this temporary account to the house account.

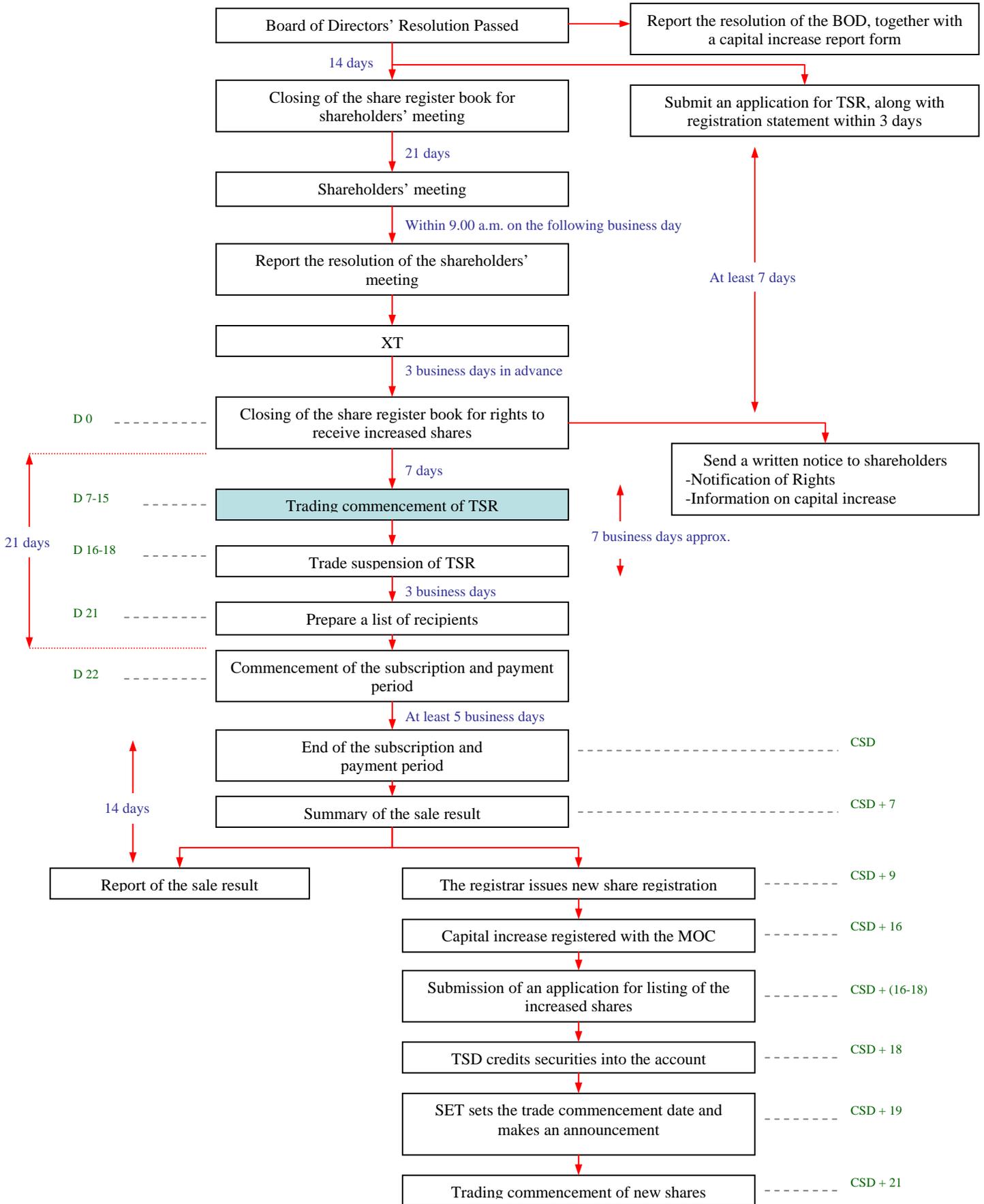
4. For clarity for shareholders regarding TSR issuance procedures and credit of TSR to the Scriptless System, listed companies should provide a detailed information to all shareholders concerning the subscription procedures as well as a summary of the results of subscription of shareholders both with and without an account with brokers in the following manner:

- To specify in the notice of the meeting of shareholders about payment methods, and subscribe an entire amount of TSR to the Scriptless System in seeking for approval for TSR issuance.

- To inform in the shareholder meeting about the methods of payment, and to include such information in the minute of the meeting, in order to enhance better understanding of shareholders.

- To state in the notice informing the rights to receive TSR sending to eligible shareholders.

## Procedures for Capital Increase by Offering Existing Shareholders Transferable Subscription Rights (TSR)



## **CHAPTER 6**

### **THE ACQUISITION & DISPOSAL OF ASSETS**

#### **INTRODUCTION**

In general, listed companies would like to expand their business in order to increase sales, profits or market shares. Growth strategies may include a purchase of supplier firms, client firms, or competitors in the same/different business or in different industries, in order to gain advantages from shared resources. An acquisition of other firms in totally different business areas is also an option. In acquiring other firms, it can either be a purchase of assets or a purchase of common stocks. Alternatively, mergers, share swaps, or joint ventures settled by cash or issuance of new shares or a combination of the two. In any cases, such decisions are significant, effecting the growth of a company, its operation, and price of a company's securities. It may also have an effect on the benefits of shareholders, depending on size of the transactions. The SET, therefore, issues a regulation on disclosure of information concerning the acquisition and disposition of assets with the following objectives:

1. To provide opportunity for minority shareholders to be notified and to participate in decision making on substantial matters.
2. To provide guidelines for good practices to report certain business decisions which may affect a company's financial status, and enable shareholders and investors to evaluate the status of a company properly.
3. To assure that the principles governing the listing of securities on the Exchange are being upheld in case of backdoor listing.

#### **DEFINITIONS**

“**Acquisition**” means a purchase, transfer, or exchange of assets with some returns

“**Disposition**” means a sale, transfer, or exchange of assets with some returns

“**Assets**” means tangible or intangible property such as land, building, equipment, or securities of other companies, including the rights to acquire or dispose of such property which is owned by a person or business, which has a value and may be disposed of, distributed or transferred.

#### **CLASSES OF TRANSACTION**

**Class 1** refers to transactions of a listed company or its subsidiaries involving the acquisition or disposition of assets, the value of which is equal to 50 percent or more but less than 100 percent

**Class 2** refers to transactions of a listed company or its subsidiaries involving the acquisition or disposition of assets, the value of which is equal to 15 percent or more, but less than 50 percent

**Class 3** refers to transactions of a listed company or its subsidiaries involving the acquisition of assets, the value of which is less than 15 percent, together with any payment by the issuance of new shares.

**Class 4** or 'Backdoor Listing' refers to an acquisition of assets with the value of 100 percent or more and such transaction is conducted between listed company or its subsidiaries and other non-listed companies, resulting in a transfer of controlling power from controlling shareholders of a listed company to controlling shareholders of the other parties; or transactions caused by a consolidation of business resulting in the shareholders of listed company holding less than 50 percent of the company resulting from the consolidation

### **BASIS FOR TRANSACTION CLASSIFICATION**

#### **1. Asset Value**

$$= \frac{\text{Value of net tangible assets of the another company X proportion of acquisition or disposition}}{\text{Value of net tangible assets of the listed company}}$$

#### **2. Net Profit**

$$= \frac{\text{Net profit from the normal course of business operation of the another company X proportion of acquisition or disposition}}{\text{Net profit from the normal course of business operation of the listed company}}$$

#### **3. Value of consideration**

$$= \frac{\text{Total value of consideration paid or received}}{\text{Total asset value of the listed company}}$$

#### **4. Value of securities issued for the payment**

$$= \frac{\text{Total value of securities being issued}}{\text{Paid-up capital of the listed company}}$$

In the case of the asset acquired or disposed is the securities , 1,2 and 3 basis shall be applied and in the case of the asset acquired or disposed is asset other than securities, 3 basis shall be applied only . But if there is an issuance of securities in consideration of the acquisition of such asset, 4 basis shall be also applied . The maximum value of the those basis is chosen for consideration the volume of transaction.

### **EVALUATION OF THE ASSET VALUE**

The evaluation of the assets acquired or disposed of by a listed company or its subsidiaries depends on the type of assets as follows:

1. **In a case where the assets acquired or disposed of are securities**, the book value of net tangible assets (NTA) of the company issuing such securities shall be evaluated, where  $NTA = \text{total assets} - \text{total liabilities} - \text{intangible assets} - \text{minority shareholders}$ , in accordance with the proportion to such securities acquired or disposed of by the listed company and its subsidiaries.

2. **In a case where the assets acquired or disposed of are assets other than securities**, the total value of the considerations shall be evaluated, though in case of disposition where the total book value of such assets is higher, the book value method shall be applied.

In case where listed securities are used as the consideration, the market value of such listed securities or the book value of NTA in accordance with the proportion to such securities acquired or disposed of by the listed company and its subsidiaries, whichever is higher, shall be applied.

For the purpose of evaluating the assets for calculating the volume of a transaction, the figures presented in a company's most recent audited/reviewed financial statement, or consolidated financial statement, adjusted with transactions occurring after the date specified in the financial statements until the date of the transactions, shall be applied.

### **CHANGING THE VOLUME OF TRANSACTION**

The SET may change the volume of transactions by including or excluding certain transactions under a company's financial statements using in the calculation, when it appears that:

1. A listed company or its subsidiaries has a substantial amount of intangible assets; or
2. The financial statements used for considering the volume of transactions do not reflect the true value of the business of the listed company or its subsidiaries due to the exceptional nature of such business; or
3. The auditor of a listed company or its subsidiaries has not reported or reported its condition on certain transactions in the financial statement.

### **COMBINATION OF TRANSACTIONS**

The SET may use the following bases to treat several transactions as one single transaction for purposes of comparing the volume of transactions if it appears that such transaction is intentionally segregated from each other in order to avoid any duty under this regulation.

(1) transactions taking place during six months prior to the day a decision to enter into transaction, unless such connected transaction has already been approved by the Shareholders' Meeting; or

(2) transactions which are connected with the acquisition of securities for a business take-over or consolidation or which are the results of the acquisition of securities for a business take-over or consolidation.

### **PROCEDURES UPON TRANSACTIONS**

PROCEDURES	CLASS 3 < 15%+ shares issuing	CLASS 2 $15\% \leq X < 50\%$	CLASS 1 <sup>1/</sup> $50\% \leq X < 100\%$	CLASS 4 $\geq 100\%$
1. Notify to the SET immediately	/	/	/	/
2. Send written notice to shareholders within 21 days from the date of disclosure of information to the SET		/		
3. Get approval from shareholders <sup>2/</sup>			/	/
4. Apply for new listing				/

<sup>1/</sup> In case where the volume of transaction is more than 50 percent based on the net profit calculation but lower than 50 percent according to other 3 methods, the SET may consider such transactions as Class 2 or 3 should the company is able to prove that the net profit calculation is affected by specific factors.

<sup>2/</sup> The approval shall be granted by a vote of not less than three-fourths of the total number of votes of the shareholders who attend the meeting and are eligible to vote, excluding those of interested shareholders and the listed company shall have an independent financial advisor to give the following opinions in connection with the transaction to the Board of Directors and shall deliver such opinion to the SET and the shareholders:

- (1) Reasonableness and benefits of transactions to a listed company;
- (2) Fairness of price and conditions of transactions;
- (3) Whether shareholders resolve to agree or disagree with transactions together with supporting reasons.
- (4) An opinion of the financial advisor with respect to the sufficiency of working capital of the listed company, where the listed company or any of its subsidiaries makes a decision to enter into a Class 4 transaction.

A listed company must send its shareholders a notice to attend the Shareholders' Meeting no less than 14 days prior to the date of the Shareholders' Meeting and must send such notice to the SET at least 5 business days before sending it to the shareholders for its review of an adequacy of information or send such notice to the SET at the same time it is sent to the shareholders. The SET may order the listed company to disclose additional information as deemed necessary and appropriate.

### **BACKDOOR LISTING**

Class 4 transactions, or generally known as "backdoor listing", means acquisitions by a listed company or its subsidiaries of all assets or substantial all of the assets of a non-listed company, which have the following characteristics:

1. The volume of transactions is equal to or greater than 100 percent; or
2. The acquisition of assets results in the controlling power being transferred from controlling shareholders of the listed company to controlling shareholders of a non-listed company or to the former owner of such assets; or
3. The acquisition of assets is a result of a consolidation of businesses resulting in the shareholders of the listed company holding less than 50 percent of the paid-up capital of the company resulting from the consolidation or results in the controlling power being transferred from the controlling shareholders of the listed company to the controlling shareholders of a non-listed company, causing the listed company to be minority shareholder.

The SET may combine separate acquisitions occurring during 12 months period prior to the date on which a listed company or any of its subsidiaries acquires assets as the same acquisition for purposes of comparing the volume of transactions.

### **PROCEDURE OF BACKDOOR LISTING**

In case a listed company or any of its subsidiaries acquires assets under Class 4 transaction in accordance with the above characteristics, the listed company shall proceed to:

1. apply for approval for entering into a transaction to the SET by filing without delay a new listing application with the SET in accordance with the Regulations of the Stock Exchange of Thailand Re: Listing of Ordinary Shares or Preferred Shares as Listed Securities;
2. convene a shareholders meeting to seek approval for entering into the transaction without delay;
3. where the listed company convenes the shareholders meeting before being informed by the SET of the result of the consideration of the listing application, the listed company shall clearly state in the written notice to the shareholders that the listed company is waiting for the result of the consideration of the SET and the written notice shall first be submitted to the SET for information before being served on the shareholders. The SET shall complete its consideration on a listing

application within 30 days from the date on which the SET has received complete and accurate documents and evidence from the listed company.

### **EXEMPTION**

Where the Class 4 transactions meet all the following requirements, the SET may not treat them as a new listing application, i.e.:

(1) The acquired business has a volume not larger than 120 percent of the volume of the listed company;

(2) The acquired business is in a similar line of business or an mutually supporting business to the listed company;

(3) The listed company has no policy to make a major change in its main business after the acquisition;

(4) The enlarged group resulting from the acquisition of assets has suitable qualifications for listing with the SET;

(5) There will be no material change in the composition of the board of directors of the listed company or in the power to control the listed company or in the controlling shareholders of the listed company.

However, the listed company shall prepare a report disclosing the acquisition of assets to the SET and shall convene a shareholders meeting to approve the decision to enter into a transaction without delay.

### **CASH COMPANY**

If a listed company and/or its subsidiaries disposes of all of its assets or substantially all of its assets used in the normal course of its business operation, resulting in the listed company and/or its subsidiaries having all or substantially all of its assets in the form of cash or short-term securities, and the listed company and/or its subsidiaries has ceased its normal business operation, it shall be deemed that the listed company is no longer suitable for listing.

Where such situation occurs, the listed company shall notify the SET in accordance with the regulation on the acquisition and disposition of assets, treated as Class 1 transaction mentioned earlier. The listed company shall also file with the SET a report showing the financial position reviewed by an auditor, after all or substantially all of the assets of the listed company and/or its subsidiaries have been disposed of within 30 days from the date of the disposition of those assets. During such period, the SET may order temporarily suspending the trading (SP) of the securities of the listed company until it has completely and clearly report the information as specified by the SET.

A listed company considered to be 'a cash company' shall rectify its qualifications suitable for listing within 9 months from the date on which the SET has received a complete and accurate report from the listed company. Upon the listed company or any of its subsidiaries having a

business suitable that fulfills for listing on the SET, the listed company shall file a new listing application with the SET as prescribed in the Regulations of the Exchange re: listing of ordinary shares or preferred shares as listed securities. In a case where a listed company cannot rectify its business qualifications for listing with the SET within the specified period, the SET may order delisting its securities.

**PENAL PROVISION**

In a case where a listed company contravenes applicable regulations, the SET may proceed to:

1. suspend the trading (SP) of securities of the listed company
2. reject the listing of securities that the listed company issues to another company which is or is not a listed company as a result of decision making to enter into a transaction
3. delist securities of the listed company .

## CHAPTER 7

### CONNECTED TRANSACTIONS

#### OBJECTIVES

According to the principles guiding listed companies in Thailand, any transaction undertaken by such firms must be for the benefit of the company's shareholders and be conducted fairly. Therefore, no transactions by listed companies should lead to any conflicts of interest between the majority of shareholders, the management and a listed company. The SET has ruled that all possible conflicts of interest must be eliminated before a company is listed and a company must maintain this requirement from then on. If a company seeking a listing can not resolve possible conflicts of interest immediately, the Exchange will require the firm to disclose sufficient information on the possible conflicts to general investors.

#### DEFINITIONS OF CONNECTED TRANSACTIONS

**“Connected transaction”** means any transaction between a listed company or a subsidiary company and the listed company's connected persons; or any transaction between a subsidiary company and its connected persons.

**“Decision to enter into a transaction”** means an entering into or a decision to enter into any contract or agreement, whether direct or indirect, in order to cause an acquisition or disposition of assets and/or rights to acquire or dispose of assets, leasing or renting asset, an offer or a receipt of service, an offer or a receipt of financial assistance and an issuance of new securities, including to create rights or waiver of such right to do the same.

**“Connected person”** means

(1) the management, major shareholders, controlling persons or persons to be nominated as the management or controlling persons of a listed company or a subsidiary company including related persons and close relatives of such persons.

(2) any juristic person having a major shareholder or a controlling person as the following persons of a listed company or a subsidiary:

- (a) the management
- (b) major shareholder
- (c) controlling person
- (d) person to be nominated as the management or a controlling person
- (e) related persons and close relatives of persons from (a) to (d)

(3) any person whose behavior can be indicated as an acting person or under a major influence of person from (1) to (2) when making decision, determining policy, handling management or operation; or other persons the Exchange deems as having the same manner

**“Management”** means directors, chief executive officers, and the next four executives succeeding the chief executive position, including all individuals at the equivalent position to the

fourth executive. This also includes individuals in management positions of accounting and finance departments.

**“Major shareholder”** means a shareholder who directly or indirectly holds shares in any juristic person in a total amount exceeding 10 per cent of the paid-up capital of that juristic person. Such shareholding shall also include the shares held by related persons.

**“Related persons”** means individuals or juristic persons under Section 258 (1) to (7) of the Securities and Exchange Act B.E.2535

**“Close relatives”** means persons related by blood or registration under law such as father, mother, spouses, sibling, children including spouses of the children.

**“Controlling persons”** means shareholders or any persons whose behavior can be indicated as persons with major influence in determining policy, or handling management or operation of a company whether such influence derives from being shareholders or authorized persons under any contracts.

**“general trading conditions”** mean trading conditions under which the price and the conditions are fair and do not cause misappropriation of benefits, including the trading conditions under which the price and the conditions are as follows;

(1) being the price and conditions which a listed company or a subsidiary receives from or offers to general persons;

(2) being the price and conditions which a connected person offers to general persons;

(3) being the price and conditions which a listed company can prove to be the price and conditions that an operator of similar business offers to general persons.

- **“normal business transaction”** means trading transaction normally undertaken by a listed company or a subsidiary for the purpose of operation business

- **“supporting normal business transaction”** means trading transaction undertaken by the general businesses of similar nature to a listed company or a subsidiary for the purpose of supporting normal business transaction of their own company.

## **CHARACTERISTICS OF CONNECTED TRANSACTIONS**

The characteristics of connected transactions can be categorized as follows:

(1) When a listed company, or its subsidiaries, decides to enter into a transaction between:

(a) Management

(b) Major shareholder.

(c) Related person or close relatives of the management and major shareholders.

(2) When a listed company, or its subsidiaries, decide to enter into a transaction with another company in which the major shareholders, controlling persons or persons who will be nominated as management or controlling persons of a listed company or its subsidiaries, including related persons or close relatives of those persons.

## **TYPES OF CONNECTED TRANSACTIONS**

Connected transactions can be divided into 5 categories as follows:

- (1) Normal business transaction.
- (2) Supporting normal business transaction.
- (3) Transaction regarding rental or lease of immovable property of not exceeding 3 years.
- (4) Transaction relating to assets or service.
- (5) Transaction regarding grant or receipt of financial assistance.

## **PROCEDURES**

When a listed company, or its subsidiaries, makes a decision to enter into a connected transaction, the listed company shall proceed as follows:

1. Immediately prepare a report disclosing information on the decision to enter into such a transaction for the Exchange including the following information:

- (a) Date of the transaction and the names of the parties involved.
- (b) General description regarding nature of asset, service and grant or receipt of financial assistance relating to the decision to enter into a transaction (in case the asset under the transaction in whole or in part is securities, the name, type of business, nature of business, summary of financial status and operating result as well as key figures of financial statement of the company who issues such securities must be identified)
- (c) A total value and criteria used in determining a transaction's total value, total value of consideration, methods of payment either in cash or exchange of asset, including conditions, interest rates, terms of payment, interest and collaterals
- (d) Details of connected persons
- (e) Characteristics and scope of interests of connected persons
- (f) In case of a purchase of assets and a grant of financial assistance, information on sources of funds and sufficiency of its working capital shall be identified
- (g) In case of lending loans, conditions that may affect shareholders' rights such as restriction on dividend payment shall be indicated.

2. In case the transaction must seek for an approval from the shareholders' meeting, a listed company must send its shareholders a notice to attend the Shareholder 's meeting no less than 14 days prior to the date of the Shareholder's meeting and must send the notice to the SET at least five business day before sending it to the Shareholders. The written notice sending to shareholders should at least contain the following information:

- (a) Information as mentioned above
- (b) Information about the company : brief information concerning the company and its business operation, list of the executives and list of the top 10 shareholders, summary of related transactions, summary of the key figures of financial statements, other information that may substantially affect the decision of investors

(c) Statements indicating that interested parties or connected persons shall have no rights to vote along with names and number of shares held by each of them

(d) Evaluation of asset value by an independent appraiser in certain cases.

(e) Opinions of independent financial advisors

(f) Proxy forms with at least one name of a member of the Audit Committee being nominated as shareholder's proxy.

(g) Opinion of the Board of Directors about a decision to enter into a connected transaction specifying reasonableness and the highest benefit to the listed company comparing with a decision to enter into a transaction with independent third party

(h) Opinions of the company's Audit Committee and /or directors which are different from the opinion of the Board of Directors under (7)

3. Approval of the shareholders of the decision to enter into the connected transaction should be passed by a vote of not less than three-fourths of the total number of votes of the shareholders, or proxies (if any), who are present at the meeting, and who have the rights to vote, excluding the votes of interested shareholders.

#### **EXEMPTED TRANSACTIONS**

1. Transaction between a listed company and a subsidiary having connected persons who are not a listed company holding no more than 10 per cent of the total shares and those connected persons are not controlling persons in a subsidiary.

2. Transaction between subsidiaries of a listed company. Connected persons of a subsidiary 2 hold stakes less than 10 per cent in subsidiary 1 and such connected persons are not controlling persons in subsidiary 1.

3. The new issuance of securities to connected persons under following conditions

- To transfer such securities to other persons who are not related to such connected persons and the price of transferred securities are not lower than the market price. Such transfer does not impact on the change of connected persons' interests.

- A connected person shall receive a securities based on his rights and in proportion to his shareholding as a shareholder.

- A connected person acts as an underwriter or a sub-underwriter of securities of a listed company or a subsidiary through an underwriting approach. The listed company, however, must clearly and fully disclose all rules and conditions of the underwriting or the underwriting during such period in a prospectus.

- The securities have been issued to connected persons according to a project of offering securities to employees or the management.

4. Transaction between a listed company or a subsidiary and a connected person that is a juristic person having a controlling person whom the listed company or the subsidiary as a shareholder of such juristic person has delegated to oversee such juristic person. The listed

company or the subsidiary and the juristic person, however, must not be connected with each other in other manner.

5. Transaction that a listed company shall prove such transaction is fair and does not cause misappropriation of benefits.

**CHAPTER 8**  
**RULES AND GUIDELINES REGARDING TAKEOVERS**  
**OF LISTED COMPANIES**

**OBJECTIVES**

Takeover, one of strategies for business expansion, has occurred to many companies lately. It shall be an acquisition of other firms either in the same industry or in different industries in order to expand its business into other business area. Takeover can be categorized into two types.

1. Friendly Takeover – the offeror and the offeree are both satisfied with the agreement or the offeree is pleased to be acquired their business.

2. Hostile Takeover – the offeror collectively purchases shares of another party until they become the major shareholder or the offeror purchases shares directly from existing shareholders of another party.

The Stock Exchange of Thailand (SET) deemed that takeover will significantly impact on the company's growth, financial status, operating result, and price of its securities. Thus, the SET prescribe the rules and guidance for listed companies concerning the takeovers with the following objectives:

1. To ensure that shareholders and investors will receive information completely, accurately, sufficiently, and in a timely manner .

2. To provide clear guidance to all parties involved, including the offerors, major shareholders, the board of directors, and financial advisors, since they are responsible for information dissemination to avoid any misleading for shareholder and investors.

**PROCEDURES FOR LISTED COMPANIES BEING TAKEN OVER**

1. A listed company is required to appoint an independent financial advisor to advise and recommend its shareholders whether to accept or reject a takeover offer based on fairness and reason. The financial advisor shall send all shareholders a written recommendation including the opinions of the board of directors regarding the acceptance or rejection of a takeover offer.

2. The listed company, which can assume from the facts that it is going to be acquired by another company as it is going through the process of a takeover offer, is required to act in accordance with the SET rules and notifications for the following events:

- Capital increase.
- Allotment of increased capital shares.
- Issuance of any securities which can be converted to ordinary shares.
- Decision to enter into a transaction concerning the acquisition and disposition of assets.
- Decision to enter into a transaction concerning a connected transaction.

3. The listed company, which can assume from the facts that it is going to be acquired by another company as it is going through the process of a takeover offer, must get approval from three-fourths of the shareholders with voting rights for the following events:

- Decision to enter into a contract or agreement for a significant amount concerning something which is not ordinary business;
- Decision to cancel a contract or agreement which is important to ordinary business;
- Granting of financial assistance to any persons in order to purchase a company's securities.

4. When transactions mentioned on No.2 and 3 must be approved by shareholders, listed companies must clearly state in the notice of shareholder meeting that the objective of meeting which is held in the event of being taken over. Any facts that the company is believed to be acquired by another firm or it is in the process of a takeover offer, along with the names and the number of shares held by each person who is not entitled to vote, should be included as well.

5. Documents to be submitted The listed company which maybe taken over is required to submit the following documents immediately:

- Takeover offer.
- Amended information on any takeover offer.

### **GUIDELINES ON THE DISCLOSURE OF INFORMATION ON LISTED COMPANIES IN RESPECT TO TAKEOVERS BY ANOTHER COMPANY**

The listed company, which can assume from facts that it is going to be acquired by another company, must perform as follows:

1. Any parties concerned with a takeover offer such as an offeror company and major shareholders of a listed company shall do everything possible to maintain secrecy until the resolution has been approved and then reported to the SET, so that it can be disclosed to the public. In addition, a representative of the shareholders, a financial advisor, or anyone concerned must be responsible for continuing to perform their functions and keep the information secret.

2. If the information is disclosed before a takeover offer can be concluded, **listed companies shall disclose the following information immediately:**

2.1 If the information concerning a takeover is disclosed while they are in the process of negotiation, the listed companies shall disclose:

- (1) Current process.
- (2) Time period in which a takeover offer can be concluded initially.
- (3) Name of the offeror's financial advisor or shareholders' financial advisor (if any).

2.2 If the information concerning the takeover is disclosed after the memorandum of understanding or any other contract or agreement is signed, the listed companies shall disclose:

- (1) List of sellers and the amount of shares to be sold.
- (2) Name and other initial information of an offeror including:
  - (a) In the case of individuals, all the names, addresses, and present occupations shall be identified.
  - (b) In the case of a corporation, the name, address, historical data, kind of business, board of director details, and major shareholders of an offer or shall be identified.
  - (c) The relationship between offerors if there is more than one offeror.
- (3) Amount of shares required by an offeror.
- (4) Acceptable price and/or desired price to purchase securities with conditions (if any).
- (5) Process, the time period for each step to be taken in the takeover offer, and the present step which is being taken.
- (6) Names of the financial advisor of the offeror, offeree, and general shareholders.
- (7) Material information of the memorandum of understanding, or any contract or agreement identifying:
  - (a) Conditions of the negotiations, pricing, and price adjustment concerning the takeover offer
  - (b) Conditions under which a memorandum of understanding may be canceled.
  - (c) Conditions of any contract which is an important factor for decision making.
- (8) Any issues and material conditions requiring approval, such as approval from a relevant governmental agency or approval from the shareholders' meeting of an offeror.
- (9) Any other information that is deemed necessary for making an investment decision.

## **CHAPTER 9**

### **MERGERS OF LISTED COMPANIES**

#### **OBJECTIVE**

At present, there have been many amalgamation announcements of several listed companies to strengthen not only their financial performance but their maximized economics benefit as well. To ensure that the listed companies have proper guidelines to follow and investors have equal access to correct, complete and adequate information. The SET deems appropriate to issue the following guidelines on how listed companies shall disclose information and shall perform after amalgamated especially the companies' listing status.

#### **LISTING STATUS**

##### **(I) Listed Company merges with another listed company**

Any new company resulting from such a merger shall retain listing status, since the firms that merged together have already passed through the listing procedure and disclosed the appropriated information to shareholders and investors. However, the SET Board of Governors may prescribe other conditions to ensure the new company has the full qualifications of a listed company and meets the criteria for maintaining listing status.

##### **(II) Listed Company merges with a nonlisted company**

The new company resulting from such a merger is required to file an application to the SET for the listing of its securities. The SET will consider its qualifications under its regulations regarding The Rules, Conditions and Procedures Governing the Listing and Delisting of Securities.

- When the Board of Governors of the SET grants the listing shares of new company, the SET concludes that the new listing share is listed in the SET on the date that the amalgamated shares are registered with the registrar and the former listed company which has been amalgamated has been delisted from the SET.

- Where one or both of listed companies in the process of amalgamation have a ground of delisting, the SET considers the instance of delisting of the new company resulting from the amalgamation is still remained unless the Board of Governors of the SET considers otherwise.

#### **PROCEDURES AND DETAILS OF INFORMATION DISCLOSURE OF LISTED COMPANIES**

1. In case a listed company is at an initial stage of discussion. If the amalgamation information is leaked or disclosed while the discussion is at an initial stage, where no clear conclusion is yet developed, a listed company shall disclose the information to the SET immediately as follows.

- (1) Facts about the amalgamation.
- (2) Objectives of the amalgamation.

(3) Procedures and expected timeframe for preliminary conclusion.

2. In case an amalgamation discussion with other companies is sufficiently clear for a certain level

In case it is clear at a certain level that the amalgamation will continue; for example, there is a signing in the Memorandum of Understanding or in any other agreement or undertaking in similar manner, a listed company shall disclose the following information.

(1) Name of company to be amalgamated with the listed company. In case this company is not a listed company, the name, background, type of business, list of directors, major shareholders and relationship with listed company (if any) shall be disclosed.

(2) Name of lead company in the amalgamation.

(3) Impact to the status of the listed company and/or member companies in the SET (if any) and a new company resulted from the amalgamation.

(4) Steps, timeframe and procedures of amalgamation together with material contents regarding the amalgamation as much as the company can disclose without jeopardizing its interests.

(5) Name of independent financial advisor.

(6) Material contents of the preliminary Memorandum of Understanding or any other agreement or undertakings in similar manner containing information of conditions of amalgamation or value of shares set to be exchanged, (if any), conditions regarding cancellation of the preliminary agreement, other conditions necessary for shareholders to make decisions.

(7) Issues expressly requiring advanced approval in case the amalgamation needs permission from the authorities or government agencies, or important conditions such as approval from the Shareholders' Meeting of the involved parties.

(8) Any other information necessary to make an investment decision in the securities of the company.

3. In case the Board of Directors of a listed company resolves to approve the amalgamation.

Immediate Disclosure should be made of any information, at least one hour before each securities trading session or at the end of the day's trading at the SET. In cases where a force majeure prevents the listed company from submitting the required information, it shall submit it to the SET at least one hour before the first round of securities trading on the

subsequent business day.

Procedures	Disclosed information
1) The Board of directors of a listed company resolves to amalgamate the company	1. Name of companies to be amalgamated together and tentative information about the business. 2. New company's name (if any) 3. Objectives or benefits expected to receive out of the

Procedures	Disclosed information
	<p>amalgamation.</p> <p>4. Step, timeframe and procedures of amalgamation together with material contents regarding the amalgamation such as how to allocate shares in a new company to shareholders, number of allocated shares, ratio and price per share.</p> <p>5. Conditions to comply according to the regulations of relevant agencies (if any)</p> <p>6. Shareholders' Meeting date and closing date of a registration book to suspend share transfer for the right to attend the shareholders' Meeting.</p> <p>7. Any other information which affects or may affect the rights and benefits of shareholders, their investment decision or to the change of securities price of the listed company.</p>
2) Shareholders' Meeting for the amalgamation approval	Resolution of the Shareholder's Meeting.
3) Board of Director resolves to arrange joint meeting of both companies' shareholders.	<p>1. New company's name</p> <p>2. Details of new company's share allocation to shareholders.</p> <p>3. Capital of the new company.</p> <p>4. List of directors, independent directors and authority of directors of the new company.</p> <p>5. New company's auditor.</p> <p>6. Joint meeting date of shareholders of companies about to be amalgamated and closing date of registration book to suspend share transfer for the right to attend the Shareholders' Meeting.</p> <p>7. Other matters as required by the SET.</p>
4) Shareholders of both companies have joint meeting	Resolution of the joint Shareholders' Meeting.
5) Applying for registration of amalgamation.	Applying date for registration of amalgamation.
6) The companies and partnership registrar accepts the registration.	Registration result of the company's amalgamation.

## **CHAPTER 10**

### **REPORTS ON SECURITIES HOLDING**

#### **OBJECTIVE**

One of the SET's most important policies is to regulate listed companies to disclose the sufficient information for investors making any decisions and to conduct a fair and orderly securities market. The SET places importance on the listed companies' directors, managements, executives, auditors and other insiders who deal in company securities to report their holdings, and any purchase or sale of the company's securities on a continual basis. This is to prevent insider trading and to prevent undermining investor confidence stemming from public suspicion regarding the propriety of any purchase or sale of securities by corporate insiders.

#### **SECURITIES REQUIRED TO REPORT**

There are several securities required to report which are common stock, preferred stock, and/or convertible shares such as convertible debenture, share warrant, and transferable subscription right.

#### **PERSONS REQUIRED TO REPORT**

Directors, management, executives, and auditors of listed companies shall prepare a report on his or her securities holdings, his or her spouse's and any minor children's to the SEC.

"Management" means directors, management, executive, or persons with managerial authority who are among the top four ranking individuals in the company directly subordinate to the managers, and all other persons who occupy a position equivalent to these top four ranking individuals. This also includes the manager of the accounting department and the manager of the financial department or person of equivalent positions.

#### **REPORT PROCEDURE**

The management of listed company shall report directly to SEC including the following:

1. The initial reporting on securities holding to the SEC uses Form 59-1.
2. Reporting on any change in securities holding arising from purchase, sale, transfer or acceptance of transfer of securities uses Form 59-2.

#### **TIME REQUIREMENTS FOR FILING A REPORT**

1. A report must be filed within thirty days of the date on which:
  - After the last day of subscription period
  - A member of management, or an auditor, is appointed.

2. When there is a change in securities holdings, each member of management and the auditor shall report on their securities holdings within three business days of the date of any changes except when the change results from one of the following:

- Exercising of a right to buy a pro rata entitlement of securities as a shareholder.
- Exercising of a right for convertible securities.
- Receiving an inheritance.

#### **PENALTY PROVISIONS**

According to Section 275 of Securities and Exchange Act B.E.2535, any person who contravenes or fails to report on securities holding according to Section 59 or delays the submission of reports on securities holdings shall be liable to fine not exceeding 500,000 baht and a further fine not exceeding 10,000 baht for every day during which the contravention continues.

## **CHAPTER 11**

### **DELISTING**

#### **OBJECTIVE**

A company's securities can be delisted in either of two ways: Voluntary Delisting and Mandatory Delisting. Either of these two ways inevitably affects the investor's interest and liquidity of the securities. Consequently, the SET has set certain principles, conditions and procedures regarding to these two ways of delisting as follow:

#### **VOLUNTARY DELISTING**

The shares of a listed company can be delisted from the SET at the company's request. In this case, the SET will treat the voluntary delisting as a co-operative decision made by that company's shareholders. The listed company must follow the Rules, Conditions and Procedures as specified in the SET notifications because delisting securities from the Exchange may affect the liquidity of the securities held by minority shareholders.

#### **PROCEDURES FOR VOLUNTARY DELISTING**

1. A listed company which wishes to delist its shares must proceed as follows:

(1) Appoint a financial advisor, with the approval of the independent directors, to act as an advisor and to recommend that general shareholders consider the delisting of the listed company's shares.

The financial advisor under the first paragraph shall perform its function as an independent professional and act fairly for the interest of the shareholders, and shall meet the qualifications as prescribed by the Exchange.

(2) Notify the SET about the resolutions of the company's board of directors concerning the delisting of its shares within the date that the board adopts such a resolution, or at least one hour before the first session of the securities trading session of the following business day. The following information should be included:

- (a) Reasons and facts relating to the delisting of the shares.
- (b) Date scheduled for the shareholders' meeting to consider the delisting resolution.
- (c) Name of the financial advisors for both minority shareholders and the offeror.
- (d) Time frame of the tender offer and the offered price of the offeror.

(3) Co-operate with the financial advisor under (1) in providing sufficient information, or take any other action as requested by the financial advisor for the purpose of preparing the recommendation to the general shareholders who are not concerned with the offeror.

(4) At least seven days before the date of the shareholders' meeting, a presentation, which is to be set up by the listed company and the financial advisor, shall be held to make recommendations

concerning the delisting of the shares and the offer proposed by the offeror. The financial advisor of the offeror may attend the meeting to give explanations.

(5) Find an offeror to make a general offer to purchase shares and convertible securities from the shareholders and holders of such securities.

(6) A shareholders' meeting shall also be held to seek a resolution for the delisting of the shares. Importantly, a listed company must send out a notice of the meeting, together with a written explanation, not less than fourteen days prior to the date of the meeting. The written explanation shall contain the following information:

(a) Reasons and facts relating to the delisting of the shares.

(b) Opinions of the independent directors.

(c) Opinions of the financial advisor of the minority shareholders appointed in (1).

(d) Offered price of the general offer to purchase shares, and other securities convertible into shares, of the listed company from the shareholders and holders of such securities.

(e) Updated information concerning the business of the listed company in the form of a report on the disclosure of additional information (Form 56-1).

(7) Any resolution on the delisting of the shares of a listed company must be voted upon by the shareholders or proxies of not less than three-fourths of the total issued shares of the listed company, and shares held by the shareholders of the listed company who object to the delisting shall not be more than ten percent of the total issued shares of the listed company.

(8) In the delisting of shares, the listed company must submit an application to delist its shares in accordance with the form and particulars prescribed by the SET.

The Board shall consider the application and notify the listed company of the result of consideration within 30 days from the date of receipt by the Exchange of the accurate and complete documents and evidence from the listed company. The Board may impose any conditions as it deems appropriate.

(9) A listed company shall set the offer period to purchase shares and other securities convertible into shares of the listed company after the SET Board of Governors notifies the listed company of its decision. The offer period should be equal to the maximum period specified in the notification of the SEC except in the following cases the period for such offer shall be as prescribed by the Securities and Exchange Commission:

- In case that a listed company has established a new company to undertake business by shareholding for supporting the adjustment of shareholding structure of the listed company, whereby the newly established company will make a tender to purchase all the shares and convertible securities of the listed company and list its shares on the Exchange;

- In case that a listed company makes a tender offer to purchase all the shares and convertible securities of the listed company that requests to delist its shares in exchange of its listed securities that are newly issued.

(10) In order to delist shares of the listed company, the Board shall order and designate the date on which the delisting shall take effect.

After the shares of the listed company are delisted, such shares shall lose their status of listed securities.

**Voluntary Delisting Procedures**

**Information for the SET**

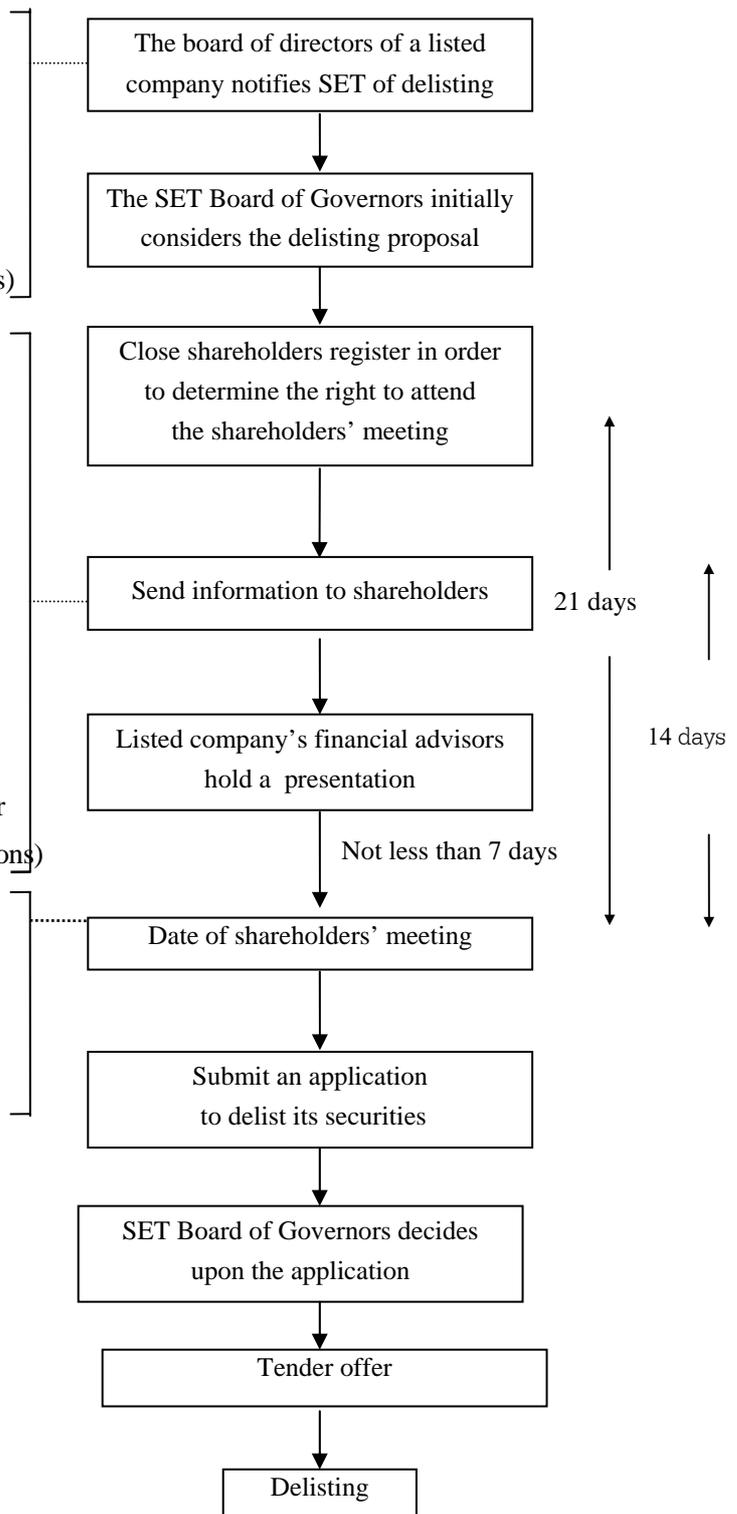
1. Reasons for delisting
2. Names of financial advisors of both minority shareholders and offeror
3. Date of shareholders meeting
4. Offered price (the price must be set before sending information to shareholders)

**Information for shareholders**

1. Reasons for delisting
2. Independent directors' opinion
3. Financial advisors' opinion
4. Offered price
5. Listed company's additional information in Form 56-1
6. Date, time, and place of presentation set by financial advisor of minority shareholders (Financial advisor of offeror may attend the meeting to give explanations)

**Meeting results**

1. Vote on delisting must be by the shareholders or proxies of not less than three-fourths of the total issued shares.
2. Vote objecting to delisting must not exceed more than 10 percent of the total issued shares.



## **MANDATORY DELISTING**

There are factors that may cause a listed company to be disqualified for listing status such as opportunity of growth, gain and loss of shareholders, reputation of the management team and qualifications as a listed securities required by the SET. Therefore, any development of a listed company that may affect its size, scope of business, value and number of shares circulating in the market may also affect its listing status. Moreover, some significant events such as the loss of major customers or the closure of key business unit may affect listing status of a listed company as well. The conditions and procedures for delisting can be concluded as follow:

### **1. Criteria for considering a possible delisting**

(1) The ordinary shares do not meet all the qualifications pursuant to the part of qualifications of listed securities in the regulations of the Exchange governing listing of securities

(2) The listed company has paid-up capital especially for the ordinary shares in an amount less than 60 million bath.

(3) The listed company violates or fails to comply with the laws governing securities and exchange, regulations of the Exchange, listing agreement executed with the Exchange as well as any circulars required by the Exchange for compliance, which may seriously and adversely affect the rights, interests or decision of the investors or the change of price of the securities.

(4) The listed company discloses false information in the application, financial statements or report submitted to the Exchange or revealed to the general public, which may seriously and adversely affect the rights, interests or decision of the investors or the change of price of the securities.

(5) The listed company fails to disclose material information or makes a mistake in disclosing material information, which may seriously and adversely affect the rights, interests or decision of the investors or the change of price of the securities.

(6) The listed company's operation or financial condition falls within any of the following cases:

(a) The assets used in the operation of the listed company has significantly lessened or are going to significantly lessen as a result of the sale, disposition, letting, separation, operation suspension, abandonment, destruction, deterioration, seizure, expropriation or any other case resulting in the same effect;

(b) The operation is halted entirely or almost entirely for any reason whatsoever, regardless of whether such halting of operation is due to the act of the listed company or any other person;

(c) The auditor issues a disclaimer or an adverse opinion on the financial statements of the listed company for 3 consecutive years;

(d) The financial condition disclosed in the latest audited financial statement or consolidated financial statements shows that the shareholders' equity is lower than zero.

In case that Shareholders' equity of a listed company, as shown in its audited financial statements, is more than zero, but the auditors report a qualified opinion, a disclaimer of opinion, or an adverse opinion; the company's financial statements must be adjusted in accordance with the auditors' opinion.

The SET will adjust a listed company's shareholders' equity based on the auditors' opinion within seven working days after the listed company submits its financial statements to the SET.

(7) The listed company enters into liquidation to dissolve its business.

(8) The listed company is under receivership by a court order or under any similar circumstance.

(9) The listed company does any act which may seriously damage the interests of the shareholders.

(10) The nature of business operation of the listed company is not suitable for being a listed company.

(11) There is a change in the listed company's shareholding in its subsidiary companies or associated companies and such change in shareholding seriously and adversely affects the results of operations, financial condition and liquidity of the listed company.

## **2. The exemption for announcing names of listed company that is subject to possible delisting.**

The SET may not announce the name of listed company that is subject to possible delisting and preparing the rehabilitation plan if it falls in these following criteria;

(1) The SET will not announce that a company needs to prepare a rehabilitation plan if the company has been able to eliminate the problem by increasing shareholder equity to more than zero. However, a company cannot rely solely on capital decreases, but should use this technique in conjunction with other strategies, e.g., capital increases, injection of new capital by a strategic partner, or some other method that achieves the same result. These efforts should provide a public firm with additional working capital and allow it to continue normal business operations. The company must disclose all available information on such a transactions to the public and must also receive approval from its shareholders before proceeding. The company must submit financial statements as of the date the problem is resolved, reviewed by auditors, or a report showing that the causes that required the rehabilitation plan have been eliminated, together with its audited financial statements, which are SET requirement.

(2) In considering the shareholders' equity by the SET, only losses arisen as a result of foreign debts which existed before the announcement of change to managed float system will be deemed unrealized foreign exchange losses. If a listed company would like to have a waiver under this condition, it must provide the following additional information:

- Details on any losses mentioned in the management report, including complete data on the impact of any changes in the baht exchange rate system and how the company distinguishes between realized losses and unrealized losses. A listed company must also

carefully detail the exact proportion of foreign debt due in the current fiscal year, and the proportion of foreign debt due in each successive accounting period.

- The management report mentioned above must be reviewed by an auditor and submitted together with the company's financial statement to the SET.

However, the SET will not accept any appraisal of assets that raises their value, as a result of a change in the baht's value, as a reason to relax the criteria for consideration.

### **3. Procedures**

#### **3.1 SET actions**

3.1.1 Publicly announce that the listed company in question is subject to possible delisting. Post NC and SP signs to prohibit trading of its securities and send a written notice to inform the company of these actions.

3.1.2 The company's securities will retain the SP sign for 30 (thirty) days from the date of SET announcement, to allow management time to make prudent decisions that benefit all parties concerned. The listed firm involved must then inform SET:

- That it has decided on one of the following actions: prepare a rehabilitation plan to propose to company shareholders; ask for a voluntary delisting; attempt rehabilitation under the Bankruptcy Act; or undertake another option that will benefit all parties involved in the firm.

- The time schedule to implement the above decision.

3.1.3 When the 30 days is over and management has clearly informed SET of its decision, SET will lift the SP sign and allow trading of these securities for a further 30 (thirty) days, and then again post an SP sign until the company has met SET criteria for removal from being delisted. If management does not inform SET of its decision by the end of the initial 30-day period, SET will continue to post an SP sign on the company securities until the company informs SET and general investors of its decision.

#### **3.2. Listed company actions (for each option)**

##### **• If the firm decides to propose a rehabilitation plan to shareholders.**

- Appoint independent financial advisor to assist management in preparing a rehabilitation plan.

- Co-operate with the independent financial advisor in organizing meeting to present the rehabilitation plan to analysts and shareholders for shareholder approval.

The rehabilitation plan must cover two (2) years be based on reasonable assumptions and show clear procedures and methods of assessment for each procedure. Moreover, the rehabilitation plan should include a forecasted quarterly financial statements reviewed by company auditors, along with quarterly information on production, distribution, revenue, costs of production, selling and administration expenses, financial expenses, and net profit as well as any and all other relevant details.

• **If the company decides to petition the court to remedy its status under the Bankruptcy Act**

- Be able to appoint a “planner” as agreed to in court to be responsible for preparing the required rehabilitation plan and be a financial advisor.
- Be able to implement the rehabilitation plan approved by its creditors and the court in lieu of any plan approved by company shareholders.

**3.3. Submission of a rehabilitation plan to SET**

To ensure that shareholders and general investors have sufficient information concerning the firm’s rehabilitation plan to be able to evaluate it and to monitor the company’s rehabilitation progress, the firm must proceed as follows:

- Submit the rehabilitation plan and clearly and completely disclose to SET and all shareholders before any meeting and all and necessary conditions involved. The company must also submit the opinions of an independent financial advisor and independent directors concerning the likelihood of the firm’s rehabilitation as well as all related documents required for consideration and approval of the plan.
- Submit five (5) copies of the rehabilitation plan approved by shareholders or the court to SET.

**3.4. Report on rehabilitation progress.**

A company subject to possible delisting and its independent financial advisor/planner or plan administrator appointed by the court are jointly obligated to report quarterly to SET on the actual implementation of the rehabilitation plan. Such reports are to be submitted together with financial statements. A company must immediately report any significant rehabilitation progress to SET.

In the event of rehabilitation under the Bankruptcy Act with an SP sign having been posted, a company exempts from filing its reviewed quarterly financial statements, but a company must submit financial statements covering the first six (6) months of the accounting year. However, a company is responsible for submitting rehabilitation progress reports to SET on a quarterly basis, or on the due date for submitting quarterly financial statements.

**Criteria for two-year rehabilitation consideration**

A company in danger of possible delisting in the normal sector is given two (2) years for rehabilitation from the date of any announcement of possible delisting. Consideration will be based on either (a) the first financial statements submitted following the end of the given rehabilitation period or (b) the latest reviewed/audited financial statements. For example, if SET announced possible delisting on March 9, 2006 for a company based on its financial statements ending December 31, 2005, The SET will consider the financial statements, due for submission on May 15, 2008 for the period ending March 31, 2008.

Guidelines and procedures for removal from being delisted

A listed company that completely resolves its financial and operational problems may apply for a transfer to its normal sector. SET has established the criteria for this action as follows:

### **1. Criteria**

SET will consider a listed company's status based on the quarterly financial statements reviewed by the auditors or the audited annual financial statements using all of the following criteria:

- 1) Show positive shareholder equity (after adjustments in accordance with the auditor's opinion).
- 2) Show a net profit from the firm's core business in three (3) consecutive quarters or for one (1) year prior to the submission of the application.
- 3) Have successfully restructured over 75% of total debt, an ability to settle debt with creditors in a timely manner during the period specified in 2) above, and debt-restructuring plans protect minority shareholder rights.<sup>1</sup>
- 4) Show the firm's strong financial position and performance on a continuous basis, with supporting consideration of cash flows.

### **2. Procedures, method of consideration, and establishment of conditions**

A company seeking exemption from rehabilitation must submit a written clarification to SET giving reasons and supporting information regarding the firm's financial status and operational results that justify the exemption from rehabilitation.

### **3. Establishment of conditions**

#### **1) Silent Period**

If SET considers a company to be eligible for transfer to the normal sector, SET will specify that strategic shareholders<sup>2</sup> may not sell their stocks for one (1) year (Silent Period) starting from the date of trading in normal sector. Such shareholders will be allowed to trade 25% (twenty five percent) of their stocks within six (6) months from the first trading date and another 25% (twenty five percent) within the next six (6) months. This prohibition also applies if a company increases its capital or issues securities that are convertible into ordinary shares with an allocation of these shares or securities to existing shareholders during the silent period.

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<sup>1</sup> If debt-restructuring plans involve capital reduction, capital increase, or issuance of convertible securities to debtors or major shareholders and their connected persons, or any action that decreases the proportion of existing shareholders to less than 10% of paid-up capital, SET will deem that such a procedure is detrimental to minority shareholder rights. However, this guideline does not affect debt-restructuring plans that have already commenced or have been previously included in a signed contract or agreement before March 28, 2003 or any plans that decrease the proportion of existing shareholders results from their having renounced their rights to subscribe for new shares (the release of the circular letter dated July 17, 2003).

<sup>2</sup> Strategic Shareholders refer to the notification concerning Listing Ordinary Shares or Preferred Shares as Listed Securities and the circular letter dated February 24, 2005

## 2) Other conditions

In addition to the conditions associated with the silent period, SET may impose the following requirements:

- (1) Signing a new listing agreement.
- (2) Any action or disclosure of additional information to eliminate any conflict of interest between a public firm and its major shareholders or management.

## 4. Announcement of transferal back to normal sector

SET will disseminate information concerning the return of a company to its former sector to shareholders and investors seven (7) working days prior to the date of such transfer.

### **Transitional provisions**

SET will deal with companies in danger of being delisted and are in the Rehabco sector at present as follows:

#### **1. Companies are in Rehabco sector for more than 2 year (or before March 27, 2004).**

1.1 Companies that meet the criteria for returning to their normal sectors.

(1) Companies whose securities are permitted to be traded will transfer to their normal sector and carry an NC sign.

(2) Companies whose securities are suspended from trading will transfer to their normal sector and carry both NC and SP signs.

However, SET will transfer the securities of the above companies to the Non-Performing Group if equity after adjustment in accordance with the auditor's opinion, is less than zero or the company shows a net loss from its core business in its audited or reviewed consolidated financial statements.

1.2 Companies that fail to meet the criteria to return to normal sector.

The SET will have their securities removed from the trading board and transferred to the Non-Performing Group.

#### **2. Companies are in Rehabco Sector less than 2 years**

SET will transfer the securities to their normal sector and post NC and SP signs.

### **Policy implementation**

These new procedures and guidelines will become effective from July 3, 2006, and supersede the delisting procedures and policies dated March 28, 2003 (and additional amendments dated April 30, 2004 and May 10, 2005).

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**CHAPTER 12**  
**BEST PRACTICE FOR SHAREHOLDER MEETING**

The objective of this best practice is to ensure that the listed companies have the proper guidelines to follow while arranging the shareholder meeting besides from the Public Limited Companies ACT B.E.2535 (A.D.1992). The SET deems appropriate to issue guidelines on how to organize the effective shareholder meeting and believed that the listed companies will get the benefit from such practice which can increase the confidence from their shareholders and investors.

To ensure that the shareholder meeting is transparency, fairness, and usefulness for every shareholder, the listed company shall comply the steps as below:

**1) Set date of shareholder meeting.**

The listed companies shall call the shareholder meeting within 4 months from the end of the fiscal year of the companies. The company should select the appropriate and available date, time and location for shareholders and avoid calling meeting too early in the morning and too late in the evening.

**2) Period to sending out the written notice calling for the meeting.**

- The shareholder meeting with regular agenda: the company should send out the written notice to the registrar and shareholders whose names appear in the register book at least 7 days prior to the meeting date. In addition, the company can send out the written notice calling for the meeting more than 7 days prior to the date of the meeting which gives shareholders the opportunity to collect the vote from other shareholders in case that they disagree with any agenda.

- The shareholder meeting with special agenda such as the ESOP agenda, the connected transaction, the acquisition and disposition of assets: the company should send out the written notice to the registrar and shareholders whose names appear in the register book at least 14 days prior to the meeting date.

Moreover, the company shall also submit copies of such document to the SET and advertise in the newspaper not less than 3 days prior to the meeting date.

**3) Detail in written notice calling for the meeting.**

The written notice calling for the meeting shall include the following information.

- 1) Agenda and the board of director's opinion in each agenda.
- 2) The procedures of attending the meeting.
- 3) The proxy together with the name of the independent director who proposed to be the proxy holder.
- 4) The minutes of previous shareholder meeting.
- 5) Copy of the balance sheet and profit and loss statement together with the auditor's report.

- 6) The annual report,
- 7) Date, time, location and the map of meeting location.

In addition, the written notice calling for the meeting shall identify the documents or any evidence to present the shareholder status who can join the meeting for both in case join the meeting themselves and give the right to other shareholders by using proxy including the certified method of any evidence, which is suitable for the individual person, juristic person for both Thai and Foreign person. The company shall give the obvious details especially proxy holders from foreign person which are type of document required for attending meeting, the document verification and the register procedure such as the foreign document certification according the domestic and foreign laws.

#### **4) The meeting agenda**

The listed company shall specify the obvious agenda in the written calling for the meeting and send out to its shareholders prior on the meeting date according to the regulation. Every agenda shall be approved from the board of director with the opinion, reasons, and operation impacts to make any decision by shareholders. In addition, the listed company may assign its legal department to review the meeting agenda before submitting to board of director meeting and shareholder meeting.

#### **5) Documents or evidence verification for attending meeting**

- The persons who verify shareholders' documents and evidence are delegated from chairman of the board, not block any shareholders attending the meeting, and facilitate the register process for shareholders. Before beginning the shareholder meeting, the evidence checkers shall report to the chairman of the board if there is any shareholder disagrees with documents and evidence for attending the meeting occur.

- Duration of document and evidence verification should be stipulated clearly regarding the start and end of the register period, and not less than 2 hours prior to the beginning of the meeting.

#### **6) Quorum and interested shareholder counting**

To meet the quorum , the shareholders who attend the meeting for both in case join the meeting themselves and give the right to other shareholders by using proxy shall not less than 25 persons or not less than half of the total shareholders and the number of shares shall not less than 1 of 3 of the total paid up shares.

The chairman of the board shall be the chairman of shareholder meeting and announce the number of shares and the number of shareholders who attend the meeting both in case join the meeting themselves and give the right to other shareholders by using proxy and the interested shareholders who have no right to vote in accordance with the Regulation of the SET such as Re: Acquisition and Disposition of Assets and Connected Transactions which exclude the votes of interested shareholders.

The listed company must recognize shareholders rights and avoid any action that violate those right especially the right to attend the meeting and the right to vote unless the particular agenda which the regulation or the company's article of association determine otherwise.

**7) Voting procedure and counting votes.**

The secretary of the meeting shall explain the process of vote prior to the beginning of the meeting for both voting by shareholders themselves and by proxy holders together with the method of counting votes for regular and particular agendas and identify the invalid vote of any agenda. (if any)

**8) Meeting participation.**

The shareholder meeting is transparently organized and able to ask relevant questions directly to the chairpersons of the committees responsible for any specific issues. On the other hands, the chairpersons shall give or explain the questions clearly and directly.

**9) Meeting resolution Disclosure.**

The listed company must disclose the ballot of each agenda particularly the significant agenda of that meeting such as the Connected Transaction approval, Acquisition and Disposition of asset approval, Amalgamation approval, and Delisting approval. Moreover, such resolutions have to specify the number voting shareholders and the amount of share for each agenda separated votes by approved, not approved and abstained.

**10. Procedures after shareholder meeting.**

- The listed company submits the resolution of the meeting within the subsequent business day of the date on which the meeting occurs or within 9 A.M. of the next business day.

- Preparing the minutes of the meeting for instance names of directors participating the meeting, the discussion issues, the clarification of the directors, the number of votes of each agenda, and specify the interested shareholders who have no voting right in each agenda.

- Submitting the minutes of the meeting to the SET within 14 days after the meeting date and to the registrar within 1 month (only Balance sheet, Profit and loss statement, Profit and Dividend allocation agenda)

- Registering the additional or amended matters resolved from the shareholder meeting with the Ministry of Commerce within 14 days after the meeting date.

- Announcing the minutes of the meeting instantly since shareholders may recognize the matters in each agenda and give the additional suggestions.

**CHAPTER 13**  
**DERIVATIVE WARRANTS (DWs)**

**DEFINITION**

Derivative warrants (DWs) are Financial instruments which any public company, limited company or government agency can issue to investors or shareholders. DW holders then have the right to buy or sell the underlying assets at a specified price or by a specified period. The underlying assets are common shares/ prefer shares of other company, the SET Index or SET 50 Index. So derivative warrants are classified in share derivative warrant and securities index derivative warrant.

Share derivative warrant is derivative warrant that grants the right to purchase shares issued by other company at any time or duration as prescribed, or a derivative warrant that grants the right to receive payment which is calculated from the difference between the price of shares issued by other company at any time or duration as prescribed and the price as specified in the derivative warrant, specifically where the price of the shares issued by other company at any time or duration as prescribed is higher than the price specified in the derivative warrant.

Securities index derivative warrant is a derivative warrant that grants the right to receive payment which is calculated from the difference between the securities index at any time or duration as prescribed and the securities index as specified in the derivative warrant, specifically where the securities index as prescribed is higher than the securities index specified in the derivative warrant.

**1. DERIVATIVE WARRANTS ISSUED BY GOVERNMENT AGENCIES****1. Information Disclosure****1.1 Immediate disclosure**

Immediate Disclosure should be made of any information that bears on decisions related to derivative warrant securities trading of the investors. The government agencies concerned shall submit reports in writing to the SET without delay on the date on which such incidents occur, at least one hour before each securities trading session or at the end of the day's trading at the SET. In cases where a force majeure prevents the Government agencies from submitting the required information, these government agencies shall submit it to the SET at least one hour before the first trading session on the subsequent business day.

These government agencies shall report to the SET immediately upon the occurrence of any of the following incidents:

(1) Date for meeting of DW holders, which shall also include the agenda of the meeting.

(2) Date of closing the DW register book to suspend a transfer of derivative warrants. The government agencies shall report the SET of the closing date of the register book at least 14 days prior to the closing date of the register book.

(3) Any adjustment causing changes in ratio or exercise price. (the government agencies shall notify the SET prior to such adjustment becoming effective)

(4) Any changes or amendment in the rights provisions and duties of the government agencies and DW holders or any issuance of new rights provisions and duties.

(5) Any changes in the custodian or exercise agent.

(6) Extension of the period of the last exercise date or of the last period to express the intent to the derivative warrant holders since the last exercise date under the derivative warrants or the last period to express the intent to exercise the rights under the derivative warrants is on the period of temporary prohibition of trading of the underlying shares, or there is an event that may affect the exercise of the warrants or expression of the intent to exercise the warrants, or other force majeure which renders the delivery of the underlying shares impossible.

(7) Other events that affect or will affect the right and benefit of the derivative warrant holders or investment decision or change in the price of the derivative warrants.

### **1.2 Timely disclosure**

Timely disclosure should be made of any information which indirectly bears on decisions related to derivative warrant securities trading of the investors. The government agencies concerned shall report this information to the SET within the specified period upon the occurrence of any of the following events.

(1) Within the subsequent business day of the date on which the following incident occurs : Exercising of the derivative warrants by the holders.

(2) Within 3 days from the date on which either or the following incidents occurs : Changing or amendment to the custodian appointment agreement or if a new agreement is made and the compensation for damage due to inability to deliver the underlying shares upon the exercise of right.

(3) Within 14 days from the date on which the following occurs: minutes of the derivative warrants holders' meeting.

## **2. Report Procedure**

The government agencies have to prepare all material information in both Thai and English and send it on-line to the SET through the electronic disclosure system. Such information, signed by authorized persons regarding information disclosure, shall also simultaneously be submitted to the SET through facsimile.

## **2. DERIVATIVE WARRANTS ISSUED BY A COMPANY**

### **1. Information Disclosure**

1.1 **Financial statement and Disclosure report** on additional information (Form 56-1) preparing and submitting within a period specified by the SEC and the company shall also submit copies of such document to the SET. In case that any company issuing derivative warrants has already prepared and submitted its financial statements and report on financial condition and results of operations to the SEC according to Section 56 of the Securities and Exchange Act B.E. 2535 (A.D. 1992), it shall not be required to prepare and submit those financial statements and report to the SEC.

A company issuing derivative warrants shall submit the following financial statements and reports to the SET within the period of time stipulated in the Notification of the SEC through the electronic media under the regulations of the SET.

- Financial statements and report on financial condition and results of operations.
- Report on clarification of the causes of change on its performance excess of 20 percent from the same period of previous year.
- Summary report on the results of operation according to the form of summary report on results of operations of listed company

### **1.2 Immediate disclosure**

Immediate Disclosure should be made of any information that bears on decisions related to derivative warrant securities trading of the investors. A company shall disclose the information to the SET without delay on the date on which such incidents occur, at least one hour before each securities trading session or at the end of the day's trading at the SET. In cases where a force majeure prevents a company from submitting the required information, the company shall submit it to the SET at least one hour before the first trading session on the subsequent business day.

The company shall report to the SET immediately upon the occurrence of any of the following incidents:

(1) Events requiring a report, in accordance with Section 57 of the Securities and Exchange Act B.E. 2535 (A.D.1992)

(2) Any adjustment causing changes in ratio or exercise price

(3) The board of directors of the company issuing derivative warrants has a resolution as follow:

- Date for meeting of DW holders, which shall also include the agenda of the meeting.

- Date of closing the DW register book to suspend a transfer of derivative warrants.

The company shall report the SET of the closing date of the register book at least 14 days prior to the closing date of the register book.

- Changing the procedures for management of risks arising from the issuance of derivative warrants.

- Any changes, amendments or prescribe of new rights provisions.

(4) Extension of time for the last exercise to the holders of derivative warrants in case of force majored.

(5) Any other circumstance which has or would have an effect on the rights and benefits of the holders of derivative warrants, or the investment decision, or the change in price of derivative warrants.

### **1.3 Timely disclosure**

The company concerned shall report this information to the SET within the specified period upon the occurrence of any of the following events.

(1) When there is a requirement for the delivery in cash, a report on the reference price used in calculating the value of cash delivered shall be made after the securities trading hours on the SET on the date of the exercise of the rights under derivative warrants.

(2) Where there is compensation for damage due to inability to deliver the underlying shares upon the exercise of derivative warrants, a report shall be made within 3 business days from the date of occurrence of such circumstance.

(3) Where there is a change or amendment to a custody agreement or an execution of a new agreement, a report shall be made within 7 days from the date of such change or amendment.

(4) When there is a disclosure of additional information to the SEC, the disclosure of such information to the SET shall also be made on the same day as the disclosure to the SEC.

(5) When there is an exercise under the derivative warrants by the holders of derivative warrants, a report on the result of exercise shall be made within the business day following the date of exercise under the derivative warrants.

### **2. Report procedure**

The company has to prepare all material information as required in 1. (except the Disclosure report on additional information (Form 56-1)) in both Thai and English and send it on-line to the SET through the electronic disclosure system. Such information, signed by authorized persons regarding information disclosure, shall also simultaneously be submitted to the SET through facsimile.

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