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Private Limited Companies can now issue Convertible Debentures

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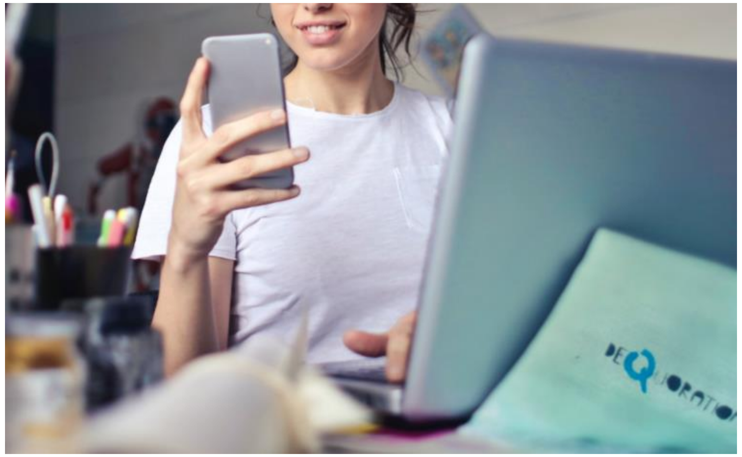
At present, the Civil Commercial Code of Thailand ("**CCC**"), which regulates companies registered in Thailand, still prohibits a private limited company from issuing debentures. However, Section 37 of the Securities and Exchange Act B.E. 2535 (1993) provides an exemption to such prohibition, in that the prohibition shall not apply to private limited companies which have been granted permission to issue debentures by the Capital Market Supervisory Board, the Office of Securities and Exchange Commission ("**SEC**").

In this regard, on 30 March 2020, the SEC issued the Notification of Capital Market Supervisory Board No. Tor Jor. 17/2563: Private Placement Offer by SMEs ("**Notification**"). The Notification can also be applied to private limited companies having certain characteristics of SMEs or start-up companies to raise funds in the capital markets by way of private placement (i.e. by other qualified investors who are not existing shareholders of such SMEs or start-up companies) for: (i) offering newly issued shares; or (ii) offering convertible debentures ("**CD**").

To be eligible to raise funds as SME, the entity must be a private limited company that falls under the category of SME pursuant to the Ministerial Regulation setting out characteristics of SME B.E. 2562 (2019). Such company is required to register for the Capital Market Fundraising Promotion Project for SME with the Office of Small and Medium Enterprises Promotion and prepare SME Factsheet (i.e. information with regard to business operations, financial, type of securities, and related risks). In addition: (i) the newly issued shares or CD (as the case may be) must be offered as private placement (meaning that they cannot be advertised to the public); (ii) the Factsheet must be distributed to interested investors; and (iii) the report of sale or result of conversion of CD must be submitted to SEC within SEC's specified timeframe.



Moreover, as private limited companies are regulated by the Department of Business Development, the Ministry of Commerce ("**MOC**"), all of the relevant filings with regard to the issuance of new shares or CD according to the Notification must be duly made to the MOC according to the regular procedures of companies.

As the SEC views that private limited companies raising funds as private placement is very new and may have significant risks in the operation of business where such companies cannot guarantee their income or profits to investors, the SEC has therefore set out certain protections for investors by limiting the maximum investment amount and number of investors based on certain types of investors.

To date, there have been approximately 10 SME/start-ups in the form of private limited company that have been successfully granted permission to raise funds under this Notification.

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