SPI Newsletter

UPDATE ON MOC REGULATION FOR TREASURY STOCK OR SHARE REPURCHASE PROGRAM

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One of the significant characteristics of a limited company in Thailand is that it is prohibited from owning its own shares. However, since 2001, the relevant laws allow a public limited company (whether non-listed or listed on the Stock Exchange of Thailand ("**SET**") or the Market for Alternative Investment ("**mai**")) to repurchase its own shares through Treasury Stock or Share Repurchase Program under either of the following two scenarios: (a) when shareholders object resolution to amend the Articles of Association concerning voting rights and right to dividend payment based on deemed unfairness; or (b) financial management when it has accumulated profits and surplus liquidity.

Notwithstanding the COVID-19 pandemic and its effects, over the past years, various listed companies have taken an interest in and implemented a Treasury Stock Program for financial management purposes. Apart from traditional dividend payment, a Treasury Stock Program is an alternative form of profit distribution to shareholders which at the same time may assist a company manage excess cash liquidity. It may provide other benefits to the company and its shareholders e.g. increase share value, reduce shareholders' equity, and improve key financial ratios (subject to future performance).

However, as the laws on this matter have been in force for approximately 20 years, certain provisions are in need of amending to reflect the current capital market's trends, create more flexibility, and reduce redundancy with other laws.

This article provides a brief update on a proposed amendment to regulation which mainly focuses on timing and alternative mechanisms for share repurchase scheme.

Overview of Amendment

On 9 February 2021, the Thai Cabinet approved in principle an amendment to the Ministerial Regulation prescribing Rules and Procedures for the Repurchase of Shares, Disposal of Repurchased Shares and Deduction of Repurchased Shares of Companies B.E. 2544 (2001) ("**Ministerial Regulation**") as proposed by the Ministry of Commerce ("**MOC**"). This proposed amendment was subsequently referred to Office of the Council of State for technical examination. Key aspects of the amendment include:

1. **Updated terms for consistency with the SET Notification**[1] i.e. "main board of the SET" has been replaced with "trading system of the SET by Automatic Order Matching" in the offer for repurchase of not more than 10% of the total shares of listed company;
2. **Removal of 14 days advance announcement for public disclosure of Treasury Stock Program performed by listed company** as the timing has already been set out in the SET Notification;
3. **Reduction of restraint period for launching the next share repurchase scheme** from "1 year" to "6 months";
4. **Shorten waiting period for commencement of disposal of repurchased shares** to investors/shareholders from "6 months" to "3 months" and "1 month" in the case of directors or employees; and

[1] Notification of the Board of Governors of the Stock Exchange of Thailand Re: Disclosure of Information and Other Acts of a Listed Company in the case that a Listed Company Repurchases Their Own Shares and Disposes of Such Repurchased Shares B.E. 2544 (2001) ("SET Notification").

5. **Increase alternative mechanisms for disposal of repurchased shares by way of Right Offering to existing shareholders and ESOP to directors or employees**. However, public limited company (even non-listed) still needs to comply with relevant regulations of the SET.

Relaxation

As for public limited companies that have already announced/performed their Treasury Stock Program prior to the enforcement of the amendment, the amendment will operate to relax the following matters:

1. Any amendment to Treasury Stock Program shall be announced to the public prior to proceeding as revised in order to safeguard interests of shareholders; and
2. New repurchase scheme can be launched right after the effective date of the amendment without being subject to 6 months restraint period.

Going Forward

Although timing for enforcement of the amendment has not yet been determined, this development will facilitate and create more flexibility to public limited companies in terms of financial management and profit distribution to shareholders, while also benefitting investors and capital markets. Following the COVID-19 pandemic, we expect that various listed companies would consider launching Treasury Stock Program due to share prices in the SET being seen as been undervalued.

In addition, we also expect that SET will amend its regulations to support these changes. We will continue to closely monitor developments and will provide you with further updates as and when updates become available.

If your business requires any assistance or advice with respect to corporate and/or capital market matters, please contact us at saithip@siampremier.com or thanaporn@siampremier.com or +662 646 1888.

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