Acquisition and Disposition of Assets

The Securities and Exchange Act B.E. 2535, amended version, effective on 31 August 2008 (Article 89/29), prescribed the Securities and Exchange Commission (SEC) to lay out details and oversee the transactions on asset acquisition and disposition of the listed companies. The SEC has thus issued the Capital Market Supervisory Board Announcement TorJor20/2551 about the regulation on significant transactions subjecting to be an acquisition or disposition of assets that the listed companies should be abide by as per SET’s requirement.

Rules Summary

When the listed company or its subsidiary has acquired or disposed an asset of significant size, the listed company will have to disclose information about the transaction to the investors. If such a transaction is of high value or of significant size which could affect the company’s financial position and operational performance, the shareholders will then have to take part in the decision process to enter into the transaction.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition</strong></td>
<td><strong>Assets</strong> refer to tangible or intangible items owned by a person or business, have value and can be transferred.</td>
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<tr>
<td></td>
<td>- Tangible items are such as land, building, equipment, investment, and warrants.</td>
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<td></td>
<td>- Intangible items are such as leasehold right on land or building, concession right, business permit, transfer or forgo the benefits as well as forgoing the claim over people who cause damages to the company. This applies to either case when the benefits are related to the company or subsidiary.</td>
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<td>- The following assets will be excluded:</td>
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<tr>
<td></td>
<td>1) Current assets used in business operation e.g. raw materials, account receivables, inventory, cash, deposits, etc.</td>
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<td>2) Investment for liquidity managements such as the investment in equity securities and debt securities.</td>
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<td></td>
<td><strong>Acquisition or disposition of assets</strong> refers to:</td>
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<tr>
<td></td>
<td>- A purchase or sale of assets or</td>
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<td></td>
<td>- An agreement/entering into contract to acquire or sell assets or</td>
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<td></td>
<td>- Acquisition or forgoing the rights to acquire or sell assets or</td>
</tr>
<tr>
<td></td>
<td>- Receiving the transfer or transferring the claim to possess assets in the long-run or</td>
</tr>
<tr>
<td></td>
<td>- Investing or cancelling investment</td>
</tr>
<tr>
<td><strong>Considering whether the transaction is subject to an acquisition or</strong></td>
<td>1. Consider whether the transaction is subject to the above mentioned definition of “assets” and “acquisition or disposition of assets”</td>
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<tr>
<td><strong>to an acquisition or</strong></td>
<td>2. Calculate the size of transaction as of the day when the board of directors has reached a resolution</td>
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<tr>
<td><strong>is subject to an acquisition or</strong></td>
<td>3. Proceed to take action according to size and significance of the transactions, for example:</td>
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<tr>
<td></td>
<td>- Not required or required to disclose information to SET</td>
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<td>- Must gain approval from the board of directors or the shareholders</td>
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</table>

Acquisition and Disposition of Assets – October, 2017
4. If the counterparty is connected person, the procedure should be in line with the connected transactions rule.

- Calculate the size of transaction to measure potential effects on the company’s financial positions and operational performance in various aspects.
- Four bases of calculation:

<table>
<thead>
<tr>
<th>Type of assets</th>
<th>Investment in ordinary shares</th>
<th>Land, building, and equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method of payment for the assets</td>
<td>Cash</td>
<td>Cash</td>
</tr>
<tr>
<td></td>
<td>Share issue</td>
<td>Share issue</td>
</tr>
</tbody>
</table>

- **Basis of transaction size calculation**

1. Value of the net tangible assets
   - Calculation formula:
     \[
     \frac{\text{Value of the net tangible assets}}{\text{NTA of the listed company}} \times 100
     \]
   - Net tangible assets (NTA) refers to total assets – intangible assets – total liability – non-controlling shareholder's equity (if any)
   - (Intangible assets are such as goodwill and deferred charges. Exceptions from deduction are for intangible assets that generate major income such as the concession and patent permit.)
   - **In case the company produces consolidated financial statements, use NTA as per the consolidated statements (data should be extracted from the latest financial statements)**

2. Net operating profits
   - Calculation formula:
     \[
     \frac{\text{Net operating profits of investment}}{\text{Buying or selling ratio}} \times 100
     \]
     \[
     \text{Net operating profits of the listed company}\]
   - **In case the company produces consolidated financial statements, use the net operating profits as per the consolidated statements (data should be extracted from the latest financial statements)**

3. Total value of consideration
   - Calculation formula:
     \[
     \frac{\text{Value of transaction gained or paid}}{\text{Total asset of listed company}} \times 100
     \]
   - **1) In case of asset disposal, compare total value of consideration and its book value. Whichever is higher will be used for the calculation**
Acquisition and Disposition of Assets – October, 2017

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<thead>
<tr>
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<tbody>
<tr>
<td>2) In case the consideration is listed securities, compare the market value of securities or NTA. Whichever is higher will be used for the calculation</td>
<td></td>
</tr>
<tr>
<td>3) In case of investment disposal to the extent that a subsidiary or affiliate no longer viable, calculate total value of consideration by incorporating the cash loans, guarantees, and other liabilities as well.</td>
<td></td>
</tr>
<tr>
<td>** In case the company produces consolidated financial statements, use total assets as per the consolidated statements (data should be extracted from the latest financial statements)</td>
<td></td>
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</tbody>
</table>

4. Calculation based on value of equity shares issued for the payment of assets
   - Calculation formula:
     
     \[
     \text{Equity shares issued for the payment of assets} \times 100 \\
     \text{Paid-up shares of the company} ** 
     \]

     ** Excluding equity shares issued for the payment of assets

Procedures as per the calculated size of transactions
- After calculating from all different bases, choose the highest value to proceed
- Summary of the process according to the calculated transaction size:

<table>
<thead>
<tr>
<th>Transaction size (X)</th>
<th>Notify the SET</th>
<th>Sending a circular notice to shareholders *</th>
<th>Seek approval from shareholders ** and have IFA</th>
<th>File for new securities listing</th>
</tr>
</thead>
<tbody>
<tr>
<td>X &lt; 15%</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>X &lt; 15% and issue shares to pay for assets</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15% ≤ X &lt; 50%</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50% ≤ X &lt; 100%</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>X ≥ 100% (Backdoor Listing)</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

* Sending the circular notice to shareholders within 21 days from the day the company has notified SET with required minimum information.
** Seeking approval at the shareholder meeting, from ¾ participating and voting shareholders and excluding the shareholders who have interest in the transition. In doing so, the company must appoint IFA to express views on the purchase or sale transaction of assets. The IFA should be expressing views on, for example, the rationality of transaction and benefits to the company, fair pricing and conditions.

Consolidating the size of transactions
Consolidation of multiple acquisition or disposition transactions can be made to compare the value of transactions, if such transactions have been separated to intentionally avoid the rule. The consolidation includes the following:

- Transactions made during 6 months prior to the day the company agreed to enter into transaction, except for the acquisition or disposition of assets already approved at the shareholder meeting.
<table>
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<tr>
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<td></td>
<td>o The transactions relating to an acquisition of securities in the takeover or merger bid, or resulting from an acquisition of securities in the takeover or merger bid.</td>
</tr>
<tr>
<td><strong>Backdoor Listing</strong></td>
<td>• Backdoor Listing is when the company or subsidiary acquires assets of a non-listed company, making transaction of these following features: 1) Transaction size ≥ 100% or 2) Transfer the controlling power to a non-listed company or to the asset owner <em>(including the transfer of power within 12-month period, except for an action to intentionally avoid Backdoor Listing rule which could incorporate transactions of more than 12 months)</em> or 3) Existing shareholders of the listed company collectively hold less than 50% of the paid-up capital of the merged entities combined. In other case, the controlling power might be transferred to those of the non-listed company. • SET may consolidate the size of transactions made within 12 months into one single transition. • Actions to proceed when the company is subject to Backdoor Listing rule - Notify the SET - File a new listing application to SET in line with the Listing Rule - Seek approval from the shareholder meeting by gaining 3/4 votes from participating and voting shareholders and excluding shareholders who have an interest in the transaction. The IFA should also express their views toward the transaction. In case the company has gained approval at the shareholder meeting before getting the result of listing application from SET, the company will have to specify in the invitation letter to shareholders that it is waiting for the result of listing application and has to send the invitation to SET before the shareholders. • SET may consider the transaction as Backdoor Listing without requiring new listing application if all of the following apply: 1) The acquired business is similar or support existing business and 2) The company does not have any policy to make a significant change in its major business and 3) The group of companies gained from acquisition of assets is qualified for listing on SET and 4) There is no significant change to the board of directors and the controlling power of the company, or the controlling shareholders.</td>
</tr>
<tr>
<td><strong>When the listed company has all or nearly all assets in cash (Cash Company)</strong></td>
<td>• Cash Company refers to the listed company or subsidiary which has disposed all or nearly all of its assets for normal business operations, making all or nearly all of its assets are now in cash or short-term assets. • Actions to proceed when the company is subject to Cash Company rule 1) Notify the SET 2) Seek approval from the shareholder meeting by gaining 3/4 votes from participating and voting shareholders and excluding shareholders who have an interest in the transaction. The IFA should also express their views toward the transaction. 3) Submit a report on financial positions, audited by an auditor, to SET within 30 days</td>
</tr>
</tbody>
</table>
## Acquisition and Disposition of Assets

- **October, 2017**

### Subject Details

from the day assets are disposed.

4) The company has to make the business qualified for listing on SET within 12 months from the day the SET has received complete and correct information.

During this interval, SET will:
- Post an NP (Notice Pending) sign on the company’s securities
- If the company cannot fulfill the process in three months, SET may consider posting an SP (Suspension) sign to prohibit trading of its securities until the company can have a qualified business for SET listing.
- If the company cannot have a qualified business within 12 months, SET may order delisting the company’s securities.

5) Once the company has a qualified business for listing, it can submit a listing application for SET to consider as per the listing rule.

### Information disclosure

- The company has to notify, via SET Portal, about the board resolutions on an acquisition or disposition of assets immediately upon making the transaction (normally on the day the board has given an approval), that is within the day the board has made the resolution or by 9.00 hrs. of the following business day at the latest.
- Key information of the board resolution are:
  1) Date, month, year of the transaction
  2) The counterparty and relation with the company
  3) Type and description of the transaction
  4) Details of assets
  5) Total value of consideration, payment method, and other key conditions agreed upon
  6) Value of assets acquired or disposed
  7) Basis for determining the value of consideration
  8) Net profits excluding special items about asset acquisition or disposal two years before entering into the transaction if necessary.
  9) Benefits that the listed company will gain.
  10) Source of fund for buying the assets. In case of loan from the financial institutions, the conditions affecting shareholders’ rights must be specified.
  11) Specify a plan on the use of fund received from asset sale
  12) In case new securities are issued to pay for the assets, specify the type of securities, amount and price of the shares issued.
  13) Other prerequisite conditions for the acquisition or disposition of assets such as gaining approval from SET or the Bank of Thailand.
  14) In case the listed company has invested in a company of which major shareholders are connected persons, and that business is related to the listed company’s business, specify the reasons and the need to have this transaction. Also, specify the measure to prevent any possible conflict of interests in the future.
  15) The views of the board of directors about an agreement to enter into the transaction (in terms of the rationality and benefits to the company, as well as associated risks, and other observations). In case the transaction needs an approval from shareholders, the board of directors must express their views clearly about whether the shareholders should pass an approval and provide reasoning.
  16) Views of an audit committee or of the directors whose views differ from the board of directors in (15), including the case when the director abstained from voting.
<table>
<thead>
<tr>
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</table>
| **Views of the IFA**        | • IFA must express his/her views on the transaction to the company’s directors on the following aspects:  
                                | 1) The rationality and benefits to the listed company  
                                | 2) Fairness of the price and conditions  
                                | 3) Reasoning about whether the shareholders should pass an approval of the transaction  
                                | 4) Views regarding the adequacy of additional working capital, in case the transaction is subject to the Backdoor Listing rule.  
                                | • The company must send the IFA’s comments along with an invitation to shareholder meeting to the SEC and SET to consider about an adequacy of information. The submission can be in either one of these two ways:  
                                | 1) Sending the documents at least 5 business days before sending them to the shareholders  
                                | 2) Sending the documents the same time as with the shareholders |
| **Delivering an invitation letter to the shareholders** | • Delivery period  
                                | An invitation must be sent to shareholders at least 14 days ahead of the meeting date  
                                | • Information to be included in the invitation are the IFA’s views and the following documents:  
                                | 1) Information disclosed to SET once the company agrees to enter into the transaction  
                                | 2) Statement regarding the responsibility of the board of directors in producing the information  
                                | 3) Views of independent experts e.g. asset appraiser  
                                | 4) Details of the company’s liability such as the debt instruments, loans, and any possible debt obligations in the future  
                                | 5) Summary of company information e.g. list of executives and major shareholders, business operations and trends, inter-company transactions, 3-year financial summaries and latest financial statement with MD&A, risk factors, and financial forecasts (if any).  
                                | 6) Views of the board of directors regarding sufficiency of working capital. In case it is insufficient, specify the source of funds to be used.  
                                | 7) Legal case or claims with material information  
                                | 8) Connected transactions  
                                | 9) Summary of key contracts in the past two years  
                                | 10) The company must nominate at least one audit committee member to be a proxy of the shareholders. |
| **Tips**                    | • In case of investment or cancellation of investment in a company, the following conditions should be considered:  
                                | o When the company will invest or cancel investing in a subsidy of listed company or of its subsidiary, the company has to notify about the investment or cancellation of investment, in line with the Information Disclosure Rule for the case when investment or cancellation of investment affects significantly that the company can have or end its subsidiary status.  
<pre><code>                            | o When the listed company or subsidiary will invest or cancel investing in a company beyond 10% of its paid-up capital, the company has to notify about |
</code></pre>
<table>
<thead>
<tr>
<th>Subject</th>
<th>Details</th>
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<tbody>
<tr>
<td></td>
<td>the investment or cancellation of investment, in line with the Information Disclosure Rule for the case when investment or cancellation of investment in a company is beyond 10% of its paid-up capital.</td>
</tr>
</tbody>
</table>
**Process**

**Process of getting shareholders’ approval for an acquisition or disposition of assets**

- **Sending an invitation to shareholder meeting along with related documents to the shareholders**

- **Submitting IFA’s comments and invitation to shareholder meeting to the SEC and SET to consider before sending them to shareholders**

- **Receive ≥3/4 votes from participating and voting shareholders, excluding ones who has interest in the transaction**

- **Notify the shareholders’ resolution or by 9.00 hrs. of the following business days.**

**Process for Backdoor Listing case**

- **Sending an invitation to shareholder meeting along with related documents to the shareholders**

- **Submitting IFA’s comments and invitation to shareholder meeting to the SEC and SET to consider before sending them to shareholders**

- **Receive ≥3/4 votes from participating and voting shareholders, excluding ones who has interest in the transaction**

- **Notify the shareholders’ resolution or by 9.00 hrs. of the following business days.**

* The company may choose to submit the IFA’s comments and the invitation to SEC and SET at the same time as with the shareholders.

**RD (for meeting entitlement)**

- **Notify about the board resolution and disclose information**

- **File the new listing application**

- **≥14 days**

- **≥5 business days**

- **≤ 2 months**

- **≥14 days**

**SET may consider the listing application within 30 days from the day SET has received complete documents.**

- **The company may choose to submit the IFA’s comments and the invitation to SEC and SET at the same time as with the shareholders.**

**IFA’s comments and invitation to shareholder meeting to the SEC and SET to consider before sending them to shareholders**

- **≥14 days**

- **≥5 business days**

- **≥14 days**
Acquisition and Disposition of Assets – October, 2017

Asset sale completed

SP sign posting reached 9 months, and SET may order delisting the securities

The company submits an audited financial position report

Post NP sign for 3 months

12-month period for finding a qualified business to list on SET

Post SP sign for 9 months

RD (for meeting entitlement)

Submit IFA's comments and invitation to shareholder meeting to the SEC and SET to consider before sending them to shareholders

Sending an invitation to shareholder meeting along with related documents to the shareholders

Notify about the board resolution and disclose information as required

Notify about the board resolution or by 9:00 hrs. of the following business day

Submit IFA’s comments and invitation to shareholder meeting to the SEC and SET to consider before sending them to shareholders

≥ 14 days

≤ 2 months

>>>> 5 business days

≥ 14 days

≥ 5 business days

≤ 30 days

≥ 14 days

≥ 5 business days

* The company may choose to submit the IFA's comments and the invitation to SEC and SET at the same time as with the shareholders

* Receive 2 1/4 votes from participating and voting shareholders. The voting rate should be notified to shareholders' resolution or by 9:00 hrs. of the following business day.
Related Regulations

SET’s regulations

- Securities and Exchange Act B.E. 2535 (Section 89/29)
- Notification of Capital Market Supervisory Board Tor Chor. 20/2551: Rules on Entering into Material Transactions Deemed as Acquisition or Disposal of Assets (Codified) (5485)

Other organization’s regulations

- Notification of the Board of Governors of the Stock Exchange of Thailand Re: Disclosure of Information and Other Acts of Listed Companies Concerning the Acquisition and Disposition of Assets, 2004