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AMENDED REGULATIONS ON PREFERENTIAL ISSUANCE BY LISTED COMPANIES

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Background

In January 2022, the Securities and Exchange Board of India (“SEBI”) introduced certain amendments to Chapter V of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (the “SEBI ICDR Regulations”), which deals with preferential issuances of securities by listed companies. SEBI introduced these amendments after receiving several suggestions and representations from market participants, and these are aimed at facilitating fund raising by listed companies through preferential issuance of securities while at the same time ensuring that such issuance is not detrimental to the interest of shareholders.

The key changes introduced by the amendments to the SEBI ICDR Regulations are as follows:

Look-back Period for Determination of the Issue Price

Under the unamended regime, the SEBI ICDR Regulations mandated that the preferential issue price will be higher of the average of weekly high low of the volume weighted average price (“VWAP”) for twenty six weeks or VWAP for two weeks preceding the relevant date¹. However, the dynamic nature of the market often resulted in a significant difference in the price determined on the basis of twenty six weeks’ average vis-à-vis two weeks’ average.

To address this concern, the amendments provide that the issue price will be the higher of VWAP for ninety trading days or ten trading days preceding the relevant date.

Change of Control/Investment more than 5%

Requirement of a Valuation Report: To address concerns with respect to the valuation of scrips where preferential

¹ “Relevant Date” means the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue.

issuance resulted in a change of control of the listed company, and where a single entity received significant shares in the listed company, the amendments provide that any preferential issue resulting in a change in control or allotment of more than 5% of post issue fully diluted share capital of the listed company to an allottee or allottees acting in concert, shall require valuation report from a registered valuer and the board of the company shall consider the said valuation for pricing.

Recommendation from Independent Directors: The amendments provide that any preferential issue, which may result in a change in control of the listed company, shall only be made pursuant to a reasoned recommendation from a committee of independent directors of the listed company after considering all the aspects relating to the preferential issue including pricing, and the voting pattern of the said committee's meeting shall be disclosed in the notice calling the general meeting of shareholders.

Lock-in

Promoters: The un-amended lock-in provisions mandated minimum three years lock-in period for promoters/promoters group for equity shares issued up to 20% of the total capital of the listed company and any equity shares issued in excess of 20% were locked-in for a period of one year. This requirement was perceived as burdensome, especially where a company was listed for a reasonable number of years on the stock exchanges and whose promoters continued to hold on to their stake in the past years. To address this concern and to streamline the preferential issue lock-in provisions with the provisions of public issue, the amended regulations provide that the lock-in requirement for issuance of up to 20% of the post issue paid-up capital to the promoters shall be reduced to eighteen months from the existing three years. The lock-in requirement for issuance exceeding 20% of the post issue paid-up capital shall be reduced to six months from the existing one year.

Non-promoters: For non-promoters, the locked-in period of the issued shares has been reduced from one year to six months.

Preferential Issue for Consideration other than Cash

The unamended regulations provided that where the preferential issuance is made for a consideration other than cash, the valuation of the assets in consideration for which the shares are issued shall be done by an independent valuer. SEBI acknowledged that the regulations did not specify the different forms of consideration that can be allowed as "other than cash". To provide such clarity, the amendments provide that only share swap backed by a valuation report shall be allowed as consideration "other than cash" for a preferential issue.

Conclusion

The amendments introduced by SEBI are a welcome step to reflect the present day requirements of the market and the growing capital needs of companies. The amendments are expected to boost fund raising by listed companies and enhance confidence among investors.



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Vietnam

NEW DRAFT LAW ON PROTECTION OF CONSUMER'S RIGHTS

ベトナムでは、新たな消費者権利保護法の法案が今年の1月に公表され、パブリック・コメント手続きに付されている。同法案では、消費者の保護を厚くすることを目的として、現行法の13条文を維持しつつ、38条文の内容を改正し、29条文を新たに追加している。本稿では、改正内容のうち、実務的に関心が高いと思われる点をご紹介します。

In January 2022, the Vietnam Ministry of Industry and Trade has released the draft of the new Law on Protection of Consumer's Rights ("LPCR") for public comments and consultation. The draft maintains 13 articles from the current LPCR, amends 38 articles, and adds 29 new articles.

Set out below is a summary of the new important provisions of the draft.

1. Protection of Personal Information of Consumers

Currently, the provisions governing consumer information protection have been mentioned in a number of different regulations such as Law on Information Technology, Law on Cyberinformation Security, Law on Electronic Transactions, or Decree 52/2013/ND-CP on E-commerce. The current LPCR (No.59/2010/QH12) has only one article regulating basic provisions on this issue (Article 6): "Consumers' information shall be kept safe and confidential when they participate in transactions relating to use of goods or services, except where competent state agencies require the information."

The draft LPCR supplements a definition of consumer information and includes provisions related to the protection of consumer information by way of 6 articles (from Article 7 to 12). Specifically, the LCPR provides that "the consumer's personal information includes consumers' personal information, information about the consumption process and other information given by consumers or organizations and individuals in connection with transactions" (Article 3.9 of the draft).

Articles 7 to 12 of the draft LPCR set out many responsibilities of traders with respect to the protection of consumer information as follows.

	Current LPCR	Draft LPCR
Responsibility when authorizing a third party to collect, store, use personal information of consumers	- Not regulated	- The contract between the two parties shall clearly specify the responsibilities of each party in complying with the provisions of law on protection of personal information; - If not, the trader shall be responsible in case the collection, storage, use of personal information of consumers breaches the provisions of law. (Article 7)
Responsibility on establishing and publishing a policy on personal information protection	- Not regulated	- Traders when collecting, storing, using consumer's personal information shall establish and publicly announce a policy on personal information protection including purpose of information collection, scope of information use, information storage time, persons or organizations that may have access to such information; etc. - The aforementioned contents shall be clearly communicated and made available for consumers to decide before or at the time of

		<p>information collection.</p> <p>(Article 8)</p>
<p>Responsibility on notification when collecting consumer's personal information</p>	<p>Traders shall notify clearly and openly the consumer of the purpose of the collection and use of consumer information in advance</p> <p>(Article 6.2.a)</p>	<p>- Traders that collect personal information of consumers are required to:</p> <ul style="list-style-type: none"> • obtain the prior consent of consumers to whom such information belongs; • establish a mechanism for consumers to be able to choose information fields that consumers agree to provide and express their consent • establish mechanism for consumers to decide whether or not to allow the use of their personal information in certain cases (e.g. sharing, disclosing, transferring information to third parties) <p>- Traders are not required to notify consumers when collecting information in certain cases (e.g. collecting publicly announced personal information; collecting personal information to enter into or perform the sale contracts of products or services)</p> <p>(Article 9)</p>
<p>Responsibility on using of consumer's information</p>	<p>- Use information in conformity with the purpose informed to consumers, and with the consent of the consumers</p> <p>(Article 6.2.b)</p>	<p>- Use consumers' personal information in accordance with the notified purposes and scope, except for certain cases (e.g. there are separate agreements with consumers on the purpose and scope of use other than the notified purposes, scope; to provide products or services at the request of consumers)</p> <p>- In case the traders change the purpose and scope notified to consumers, such traders are required to notify customers again and receive the consumer's consent for such change.</p> <p>(Article 10)</p>
<p>Responsibility on ensuring safety and security of consumers' personal information</p>	<p>- Traders who collate, use or transfer information about consumers are required to ensure safety, accuracy and completeness when collating, using or transferring information about consumer</p> <p>(Article 6.2.c)</p>	<p>- Traders are required to ensure the safety and security of consumers' personal information collected and stored, and prevent illegal use of information; illegal change or destruction of information, etc.</p> <p>- Traders are required to establish a mechanism to receive and settle consumers' complaints related to the illegal collection of personal information, misuse of the notified purpose or scope.</p> <p>- In case an information system is attacked, creating the risk of losing consumers' personal information, traders or parties storing relevant information shall notify the relevant authorities within 24 (twenty-four) hours after detecting the incident and take necessary measures.</p> <p>(Article 11)</p>
<p>Responsibility on updating,</p>	<p>- Traders who collate, use or</p>	<p>- Traders are obliged to check, update, adjust, transfer or destroy consumers' personal information upon the consumers' requests or</p>

<p>adjusting, transferring or destroying personal information of consumers</p>	<p>transfer information about consumers are required to take the initiative of updating and amending information on discovery that it is inaccurate, or to make measures to enable consumers to update and amend such information</p> <p>(Article 6.2.d)</p>	<p>provide consumers with the means by which they can check, update, adjust, transfer or destroy their personal information by themselves.</p> <p>(Article 12)</p>
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These regulations are very similar to the provisions on the protection of the personal information of consumers in e-commerce activities stipulated in the Decree 52/2013/ND-CP. Thus, under the draft LPCR, consumers in e-commerce transactions as well as other types of transactions will be protected with the same policy.

2. Protection of Vulnerable Consumer

One of the notable points in the draft LPCR is the regulation on the protection of the rights of vulnerable consumers. This is a completely new regulation compared to the current LPCR. Vulnerable consumers under the draft LPCR include elderly people, people with disabilities, children, ethnic minorities, and other vulnerable groups in accordance with relevant laws (Article 3.10).

For vulnerable consumers, the traders are requested to implement the following policies:

- Have policies on and ensure priority rights in prices, fees, and other incentives for vulnerable consumers in the purchase and sale of products and provision of services.
- Provide an appropriate complaint and dispute settlement mechanism;
- Comply with regulations on prohibited activities stipulated by LPCR as well as laws and regulations regarding elderly people, people with disabilities, children, ethnic minorities etc., during the transaction process;
- Have mechanisms and policies to fight discrimination, abuse, exploitation of vulnerable consumers in the collection, storage, and use of their personal information;
- Have other incentive and support mechanisms and policies as prescribed by laws.

3. Responsibilities of Traders to Consumers

The draft LPCR adds many new responsibilities of traders to consumers as follows:

- a) Responsibility to ensure safety and quality of products and services provided to consumers (Article 19)
 - Traders are responsible for ensuring the safety and quality of products and services provided to consumers in accordance with the contents that are registered, notified, announced, agreed with the consumers, or prescribed under the laws.
 - In the process of performing the responsibility to ensure the safety and quality of products and services, traders need to ensure their suitability with consumer groups according to age, gender, income, geographical area, ethnicity, health status, mental and physical characteristics.
 - Traders are responsible to warn about products and services that are likely to be unsafe, adversely affect the health, life, and properties of consumers, and notifying prevent measures.

b) Responsibilities for receiving and handling consumer complaints or requests (Article 30)

Business organizations and individuals are responsible for:

- Developing and publicly announcing the process of receiving and resolving consumer complaints or requests at a conspicuous location at the headquarters, business locations, and on the website (if any).
- Receiving and handling consumer complaints or requests in accordance with the announced process.

c) Responsibilities for defective products (Article 31, Article 32)

Responsibilities for defective products are stipulated in the current LPCR (Article 22). The draft LPCR divides defective products into 2 groups:

- (i) Defective products of group A means the products capable of causing damage to the health and life of consumers and
- (ii) Defective products of group B means the products capable of causing damage to consumers' property.

The product recall process is basically the same as the current regulation, however, for products of group A, traders, when detecting a defective product, must take all necessary measures to stop the supply of defective goods in the market. For the products of group B, this action is not required.

The draft LPCR adds a new regulation on the responsibility of the competent authorities on supervising the recall of defective products to ensure that the recall is carried out in accordance with the notified contents.

4 Protection of Consumer's Right in Particular Transactions

The draft LPCR adds a new chapter addressing some particular trading forms, i.e., distant transactions, continuous provision of services, home sales, and specifying the trader's responsibilities when transacting with consumers. These types of transactions are increasingly popular in Vietnam but pose many potential risks to consumers.

- Distant transaction means a transaction for products and services performed in cyberspace or other indirect means, in which, consumers are not allowed to check and directly contact products and services before participating in transactions.
- Continuous provision of services is the activity of provision of services for a term of three months or more or for an indefinite term.
- Home sales is the activity of selling products and providing services, in which traders actively approach and introduce products and services for sale to consumers. Home sales include the following forms: (i) Door-to-door sales, (ii) Multi-level marketing, and (iii) Sales at a place that is not a place of regular transactions.

Currently, some regulations related to such transactions are sporadically regulated in many different legal documents, such as Decree 99/2011/NĐ-CP guiding a number of articles of current LPCR, Decree 40/2018/NĐ-CP providing a regulatory framework for multi-level marketing, or Decree 52/2013/ND-CP on e-commerce. However, they are assessed as incomplete and lacking in specificity. The supplement of specific provisions into the LPCR with greater legal effect is expected to improve the effectiveness of consumer protection.

Conclusion

The deadline for the MOIT to receive comments is 10 March 2022. The new LPCR will be enacted in the middle of next year and is likely to take effect in early 2024. With many new and specific regulations, the new LPCR is expected to protect consumers' interests more effectively. Traders must take note of these new regulations and change and update their policies in due course when selling goods or providing services to consumers.

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Thailand

ADDITIONAL AMENDMENTS TO THAILAND'S CONDOMINIUM ADVERTISEMENT REGULATIONS

コンドミニアムユニットの販売にかかる広告規制を定めた省令が、消費者保護法に基づく下位規則として、2021年11月22日付で制定された（12月20日付官報掲載）。当該省令においては、一定の広告に関して環境影響評価（EIA）に関する承認取得状況の情報を記載することが新たに求められるなど、従前の広告規制が整理・拡充されている。

Background

In the past few years, Thailand has experienced a rather high number of consumer disputes in relation to condominium sales advertisements. This was due to complaints filed by consumers to the Office of Customer Protection Board in relation to the actual conditions of the condominium, which did not match the quality or understanding proposed in the advertisement by real estate developers. To address this, revised regulations have been introduced to govern advertisement of condominium projects both online and offline and business operators must ensure that their advertisement content complies with the relevant regulations.

Previously, the advertising statement of the condominium sales was mainly regulated by the Ministerial Regulations No.3 of 1983, issued pursuant to the Consumer Protection Act of 1979 (the “CPA”)¹. However, the said ministerial regulations did not cover advertising statements which failed to specify the detail of compliance with the Enhancement and Conservation of the National Environmental Quality Act of 1992, i.e., the approval of the Environmental Impact Assessment (EIA) Report.

On 20 December 2021, the Ministerial Regulations prescribing the Advertising Statement of Product or Service Which is Unfair to Consumers or any Statement Which May Produce Adverse Effects on Society at Large of 2021 dated 22 November 2021 (the “**Ministerial Regulations on Advertisement**”) was published in the government gazette to replace the previous ministerial regulations. Pursuant to the rationale of the Ministerial Regulations on Advertisement’s promulgation, the new regulations were necessary because at present, there are many new technologies for advertisement of goods and services and unfair advertisement would affect public and consumer benefits. The law needs to match with such technological advancement, and ensure that the advertisement statement is appropriate.

Generally, the Ministerial Regulations on Advertisement aim to integrate and combine previous regulations into one comprehensive list. This constitutes the uniform negative list of the advertising statement of product or service, which are unfair to consumers or may produce adverse effects on society at large issued in accordance with Section 22 Paragraph two (5) of the CPA.²

The Advertising Statements of Condominium Sales

Under the Ministerial Regulations on Advertisement, the advertising statements of condominium sales can be divided into two categories as follows:

1. Condominium which has not been registered under condominium laws

The advertising statement, which does not contain the following statements, will be deemed unfair and may produce adverse effects on society at large:³

¹ As amended by the Ministerial Regulations No.7 of 1995 issued pursuant to the CPA.

² Section 22 Paragraph two (5) of the CPA prescribes that an advertisement shall not contain any statement which is unfair to consumers or any statement which may produce adverse effects on society at large, be it a statement as to origins, conditions, qualities or characteristics of goods or services as well as the delivery, procurement or use of goods or services. Other statements as prescribed in the Ministerial Regulations are deemed to be statements which are unfair to consumers or statements which may produce adverse effects on society at large.

³ Clause 8 of the Ministerial Regulations on Advertisement.

Advertising channels	Required details
Newspaper ⁴ or print media, electronic media or other similar electronic advertisement media	<ul style="list-style-type: none"> (a) Information on whether the project has relevant building permit from the local officer under the building control laws; (b) Information on whether they have approval under the promotion and protection of environmental laws (in case the project is subject to Environmental Impact Assessment (EIA) Report's preparation); (c) Month and date of the construction commencement and completion of the condominium; (d) Statement which shows that they will be registered as a condominium under condominium laws; (e) Location of the land, number of title deeds, land size of the project and the map showing the boundary of the land and location of the condominium; (f) Statement showing whether the land and condominium building does not have or have obligation with financial institutions, individuals or any juristic persons; (g) Number of floors and number of condominium units; (h) Statement showing that in the same condominium, there are condominium units for residential or office; or for residential and office purpose; (i) Statement showing expenses and taxes, which the owners of condominium units have to pay under the condominium laws; (j) Items and sizes of the asset which are private properties and common properties. Should there be an advertisement concerning the items and sizes of asset for private properties and common properties that are different from the condominium laws' stipulation, in such case, information on the month and date of commencement and completion of such construction, procurement, or installation of such property shall be stipulated; (k) Name and address of the condominium business operator and in case of juristic person must stipulate the amount of registered capital, paid-up capital, the name of the managing director or partner or authorized director of such juristic person; and (l) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions.
Broadcast radio	Month and date of construction commencement and expected completion of the condominium.
Broadcast television	<ul style="list-style-type: none"> (a) Month and year of construction commencement and completion; and (b) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions.
Advertising banner or similar advertising media	<ul style="list-style-type: none"> (a) Month and year of construction commencement and completion; (b) Location of the land, number of title deeds, land size of the project and the map showing the boundary of the land and location of the condominium; (c) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions; and (d) Information on whether they have approval under the promotion and protection of environmental laws (in case the project is subject to EIA Report's preparation).

2. Condominium which has been registered under condominium laws

The advertising statement, which does not contain the following statements, will be deemed unfair and may produce adverse effects on society: ⁵

⁴ Newspaper advertisement is not subject to item (h) or (i) or (j) requirement.

⁵ Clause 9 of the Ministerial Regulations on Advertisement.

Advertising channels	Required details
Newspaper ⁶ or print media, electronic media or other similar electronic advertisement media	(a) Condominium registration number; (b) Statement showing the approval, letter number, date month and year of approval under the promotion and protection of environmental laws (in case the project is subject to EIA Report's preparation); (c) Location of the land, number of title deeds, land size of the project and the map showing the boundary of the land and location of the condominium; (d) Statement showing whether the land and condominium building does not have or have obligation with financial institutions, individuals or any other juristic persons; (e) Number of floors and number of condominium units; (f) Statement showing that in the same condominium, there are condominium units for residential or office; or for residential and office purpose; (g) Content showing expenses and taxes, which the owners of condominium units have to pay under the condominium laws; (h) Items and sizes of the asset which are private properties and common properties other than stipulated under the condominium laws; (i) Name and address of the condominium-registered person and in case of juristic person, the amount of registered capital, paid-up capital, name of the managing director or partner or authorized director of such juristic person; and (j) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions.
Broadcast radio	Condominium registration number and name of the condominium-registered person
Broadcast television	(a) Condominium registration number and name of the condominium-registered person; and (b) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions
Advertising banner or similar advertising media	(a) Condominium registration number and name of the condominium-registered person; (b) Location of the land, land size of the project and the map showing the boundary of the land and location of the condominium; (c) Statement confirming that the advertised photograph matches the actual condition or models are based on actual conditions; and (d) Information showing the approval under the promotion and protection of environmental laws (in case the project is subject to EIA Report's preparation).

Furthermore, the Ministerial Regulations on Advertisement require that the advertising statement must be clearly seen and legible, or the letter size must be more than two millimeters for newspaper advertisement or must be bigger than one-third of the biggest banner letter size or any similar advertisement media, or must contain the information about where customers may request more details on the advertisement.⁷

Penalty

Any person who, in an advertisement, fails to comply with the Ministerial Regulations of Advertisement issued under Section 22 Paragraph two (5) of the CPA, shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding sixty thousand Baht, or both.⁸

Moreover, in case the perpetrator is a juristic person, if such misconduct of the juristic person arises from the order or act of the director, manager or any responsible person for such juristic person, or in the case that the person has duty to order or act but omit from such order or act, which caused the juristic person to violate, such person

⁶ Newspaper advertisement is not subject to item (f) or (g) or (h) requirement.

⁷ Clause 11 of the Ministerial Regulations on Advertisement.

⁸ Section 48 of the CPA.

shall be liable under the provision of such violation.⁹ Therefore, prudent business operator, i.e., seller of condominium, should also verify compliance of advertisement materials used by the project developer. If there are non-compliant advertisements being used, they should be discontinued and corrected to ensure compliance and limit liability under such laws.

Our Remarks

Based on the above disclosure of information and advertisement requirements, business operators should ensure that disclosed and advertised information is complete and accurate to prevent non-compliance. Additional information should also be available if consumers wish to obtain further details and supporting documents clarification. The Ministerial Regulations on Advertisement aim to regulate any misleading advertisement information or non-disclosure, which means consumers should be able to enter into the sale and purchase agreement of condominium unit with sufficient information for them to make an informed decision to purchase. Compliance by business operators, who have fully disclosed all the necessary information to consumers, would also benefit the justice system in reducing the log for cases concerning condominium disputes between consumers and real estate developers in the future.

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⁹ Section 59 of the CPA.

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