

Tilleke & Gibbins

SECURITIES AND EXCHANGE ACT UPDATE: MANDATORY APPOINTMENT OF COMPANY SECRETARY

by

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On August 31, 2008, Section 89/15 of the Securities and Exchange Act (No. 4) B.E. 2551 (A.D. 2008) mandating the appointment of a Company Secretary by the Board of Directors of the following companies came into force.

- Public limited companies permitted to offer shares to the public, with the exception of public limited companies specified in the notification of the Capital Market Supervisory Board.
- Public limited companies listed on the Securities Exchange of Thailand or whose shares are traded over the counter.

The key regulatory requirements and provisions which your company shall be required to observe and comply with are set forth below.

1. **Appointment of a Company Secretary:** The Board of Directors must appoint a Company Secretary and, within 14 days from the date of such appointment, shall notify the Office of the Securities and Exchange Commission (“SEC”) of the Company Secretary’s name and the location of corporate documents.

The Board of Directors must submit the first notification to the SEC **by September 15, 2008**. Failure to appoint a Company Secretary could expose the Board to a fine of Baht 100,000 and an additional fine of Baht 3,000 for each day of non-compliance (Section 281/4).

2. **Roles and Duties of a Company Secretary:** The Company Secretary shall perform the following duties on behalf of the Company/Board of Directors:
 - a. Preparing and maintaining the following documents:
 - (1) Register of directors.
 - (2) Notices calling for directors’ meetings, minutes of Board of Directors’ meetings, and Company’s annual report.
 - (3) Notices calling for shareholders’ meetings and minutes of shareholders’ meetings.
 - b. Maintaining a report on directors or executives who have an interest in a resolution. The report must be submitted to the chairperson of the Board of Directors within 7 business days from the date of receipt of the report by the company.
 - c. Performing any other matters as specified in the notification of the Capital Market Supervisory Board.

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A Company Secretary shall be subject to a fine of not more than Baht 100,000 for failing to comply with the aforementioned duties (Section 281/5).

A Company Secretary shall perform his duties with care and responsibility and in good faith as well as in compliance with all laws, the company's objectives and articles of association, and the resolutions of the meetings of the Board of Directors and shareholders of the company.

In addition, a Company Secretary must adhere to the following principles in the performance of his duties:

- Business Judgment Rule (Section 89/8 paragraph 2).
- Duty of Loyalty (Section 89/10).
- Conflict of Interest (Section 89/11 (2) and (3)).
- Disgorgement of undue benefits to the company (Section 89/18).

A Company Secretary could be liable to a fine not exceeding the damages incurred or the benefits obtained but not less than Baht 100,000 for failing to adhere to the above principles. In addition, in cases where an offense is committed with dishonest intent, the penalty shall be an imprisonment term of not more than 1 year and/or a fine of not more than 2 times the damages incurred or the benefits obtained but not less than Baht 500,000 (Section 281/7).

