

Update on Employee Stock Option Program (ESOP) for SMEs

It has been over two years since the Securities and Exchange Commission (SEC) issued the Notification No. TorJor 17/2563 re: Offering of Newly Issued Securities through Private Placement by Small and Medium Enterprises (SMEs) on 12th March 2020 to relax the requirements for SMEs to raise funds in the capital market through a private placement, which includes an offering of ESOP.

According to this SEC Notification, an SME (as defined in the Small and Medium Enterprises Promotion Act B.E. 2543 (2000)) can issue newly issued shares and/or convertible debentures (CDs) under the ESOP to its directors or employees. No specific approval from the SEC is required for the SMEs to offer the ESOP by issuing shares because the general approval has already been granted by the SEC under this Notification. However, if the ESOP is for CDs, a transfer restriction must be registered with the SEC before the offering of the CDs.

The SME issuing the ESOP must provide a factsheet to its directors or employees for them to consider before they decide to invest in the ESOP. The SMS must also report the results of the ESOP offering to the SEC within 15 days after (1) the closing date of the share offering, or (2) the date of exercising rights over the CDs. An advertisement on the ESOP offering to the public is prohibited. Only a disclosure of necessary information on the ESOP offering to the directors/employees is allowed.

Despite the requirements for the ESOP offering has been relaxed since 2020, as of September 2022 only a small number of the ESOP offerings has been filed by the SMEs with the SEC. Most of them are in form of the CDs.



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