



## Legal Alert | Capital Markets

### Launching Your IPO During the COVID19 Pandemic – To Delay or Not to Delay, that is the Question...

#### Living in Uncertain Times

More than a year has passed since our lives were turned upside by the outbreak of COVID-19. Across the globe, millions of people have succumbed to the virus and countless businesses have collapsed. In Thailand, although the loss of life has been relatively low, the pandemic has devastated the country's economy. Whilst most business sectors have experienced the disruptive effects of the pandemic, the travel and tourism industry, which accounts for approximately 15% of Thailand's GDP, has been particularly hard hit – with many hotels, airlines, travel agencies and tour operators being forced to shut down. This, in turn, has caused business and investment sentiment in Thailand to remain generally cautious.

Due to this ongoing economic uncertainty, Thailand's capital markets have not been spared from the effects of the virus. Many companies whose IPOs were originally slated for 2020 have adopted a "wait and see" approach, by either putting their IPO aspirations on hold or by actively taking steps to find alternative funding sources.

A total of 26 companies launched IPOs in Thailand in 2020, with a combined capital raise of approximately USD 4.96 billion (excluding IFFs and REITs). Many of these company's focus on businesses involving innovation and new technology, such as food science, healthTech, and e-commerce, which reflects the growing implementation of Thailand 4.0, the Thai Government's ambitious new economic model designed to pivot from a traditionally agrarian economy to promote and support innovation, creativity, research and development, higher technologies and green technologies.

Although there was a general downturn in the capital markets in 2020, local market analysts seem to be more upbeat in 2021, predicting the resurrection of a number of previously delayed IPOs due to an overall improvement in business sentiment and the global

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#### Get in touch

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Kudun Sukhumananda  
Partner  
[kudun.s@kap.co.th](mailto:kudun.s@kap.co.th)

Thitawan  
Thanasombatpaisarn  
Senior Associate  
[thitawan.t@kap.co.th](mailto:thitawan.t@kap.co.th)

Tanutchaya  
Piyapichanpong  
Associate  
[Tanutchaya.p@kap.co.th](mailto:Tanutchaya.p@kap.co.th)

Nutthar Hongchutchaval  
Associate  
[nutthar.h@kap.co.th](mailto:nutthar.h@kap.co.th)

rollout of COVID-19 vaccines. However, the jury is still out on whether or not these predictions will prove to be accurate.

While some companies may consider it still too risky to launch their IPO during the pandemic, there may actually be viable reasons for doing just that – especially for those companies who are in a state of readiness to launch an IPO but whose plans are currently on hold.

### **Taking Advantage of Pre-Pandemic Financial Statements**

Companies who wish to file an IPO in Thailand must comply with the Thai Financial Reporting Standards for Publicly Accountable Entities (TFRS for PAEs) which, among other things, require an IPO applicant to submit audited financial statements and/or audited consolidated financial statements for the three years immediately preceding the year of the IPO application, as well as its latest audited quarterly financial statements (the “**Relevant Financial Statements**”).

The historical financial statements filed by a company as part of its IPO application are critical to the success or otherwise of an IPO. Companies whose Relevant Financial Statements show historically poor financial performance are likely to be subject to additional scrutiny by the Thai Securities and Exchange Commission (“**SEC**”) and investors alike – and, ultimately, Relevant Financial Statements showing poor financial performance is likely to have a negative impact on the success of their IPO. Conversely, companies whose Relevant Financial Statements show historically strong financial performance are likely to experience heightened interest in and positivity towards their IPOs.

The timing of an IPO application is clearly critical. Every company planning to IPO should aim to launch its IPO at a time when its Relevant Financial Statements show robust financial performance.

### **IPO Filings Before and After 2021**

Due to the negative effect of the pandemic on most business sectors in Thailand, it is reasonable to expect that the majority of companies will have performed better, from a financial perspective, before the economic effects of the pandemic were fully materialized in mid to late 2020. As such, a company whose Relevant Financial Statements include pre-pandemic financial years (i.e. 2019 and before) will typically be in a better position to present more attractive historical financials when it submits its IPO application.

For example, a company that files an IPO application in 2021 will be required to submit its audited financial statements for 2018, 2019, and 2020 (i.e. the three years immediately preceding the year of the IPO application), as well as its most recently audited 2021 quarterly



### **Kudun and Partners**

23rd Floor, Unit C and F,  
Gaysorn Tower 127,  
Ratchadamri Road,  
Lumpini, Pathumwan  
Bangkok, 10330, Thailand  
contact@kap.co.th

financial statements. Such a company will be able to give both regulators and investors alike a chance to view its pre-pandemic financial performance, which, on balance, is likely to be more favorable than its post-pandemic financial performance.

Conversely, company's whose IPO filings include Relevant Financial Statements for only post-pandemic years (i.e. 2021 onwards, the years when a majority of companies are likely to encounter a downturn in their financial performance due to the effects of the pandemic) may end up facing extra burdens, including requirements to provide additional information to the SEC and/or requests to improve their internal control procedures and accounting systems – all of which may result in the company incurring additional costs and potentially substantial delays in the IPO process.

### **Thinking Strategically for Success**

While some companies may wish to adopt the passive “wait-and-see” approach on the basis that it is simply too risky to launch an IPO in 2021 or 2022, companies should also consider the potential negative consequences of waiting too long to file, thereby losing the opportunity of filing Relevant Financial Statements for pre-pandemic financial years and potentially having to incur the additional burdens described above as a direct result of filing Relevant Financial Statements for purely post-pandemic financial years.

In summary, it is clear that companies contemplating an IPO in Thailand, either this year or in the next few years, have a lot to think about in terms of how best to position themselves for success. As with many things in life, timing is critical and missteps in IPO strategy and planning can ultimately be very costly.

For further information about how to launch your IPO in Thailand, please reach out to our Capital Markets Practice Group at Kudun and Partners or alternatively, contact our authors.

## **About Us**

### **Capital Markets Practice Group**

Praised by our clients for providing cutting-edge advice on complex securities and regulatory matters, our capital markets practice continues to represent many companies in their IPO transaction covering various sectors. We advise our clients on pre- and post-issue matters such as corporate restructurings, debt refinancing and liability management including a complete solution for evaluating capital market issues ensuring the correct set up for tax optimization through pre-IPO strategies.

We successfully represented Prosper Engineering Public Company Limited (mai: PROS) on its domestic initial public offering on the Market for Alternative Investment (mai) with an approximate total paid up capital of THB 270 Million, the first time in history that the IPO ceremony is held exclusively online and has offered a 100% return to investors from the IPO price.