

Regulation of investment advisers in Thailand

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Many people in Thailand are now focused on their personal investments. Investors want to know the products in which to invest and how to plan their finances. They are therefore increasingly turning to investment advisers. Given the increasing demand for these services, it is worthwhile to examine how investment advisers are regulated.

The Securities and Exchange Act includes investment advisory services within the scope of the securities business, which is subject to regulation by the Finance Ministry and the SEC. The Act defines "investment advisory service" as giving advice to the public, whether directly or indirectly, about the value of securities or the suitability of investing in those securities and the purchase or sale of any securities, for a fee or other remuneration. Specific SEC notifications may specify ways in which advice can or cannot be given.

Subject to certain exceptions, the law stipulates securities business can be undertaken only by a limited or a public limited company, or by a financial institution established under other laws, and holding a licence granted by the finance minister, on the SEC's recommendation.

The licensing process is rigorous. The applicant must show the SEC that it meets all relevant requirements such as not having financial hardship or any deficiencies in necessary controls, and sound business conduct. The applicant must also show how it will maintain capital funds and set aside reserve capital as required.

The licensing process also gives consideration to the characteristics of the major shareholder(s) and any director, manager or person with managerial authority. For example, such managerial personnel must not be or have been bankrupt, nor imprisoned by a final judgement for an offence related to property.

A securities company must comply with the rules, conditions and procedures specified in the notification of the Capital Markets Supervisory Board. The board may also specify fees and/or service charges that the company may charge its customers.

Once licensed, the company's appointment of personnel to perform the duties of analysing investments and giving investment advice is subject to SEC approval. Such investor contacts must meet criteria with respect to education, experience and/or examination requirements. As with management personnel, investor contacts must have good character. They must not have any record of deceitful, fraudulent or dishonest management of assets or any improper behaviour that materially affected any clients, investors, companies, shareholders or the money or capital market as a whole. The relevant regulations go into greater depth as to the specifics.

The company must also have in place systems that demonstrate its readiness to undertake the business including internal controls for the giving of advice, and a system for monitoring investments of the advisory company and its employees. It must also have a compliance supervisor in charge of rules related to prevention of conflicts of interest and internal controls as well as to supervise investor contacts for compliance with the law, notifications and standards of professional conduct.

An investment advisory company, in contacting and soliciting clients, must prepare client information and take into account each client's investment objectives, knowledge and understanding related to investment, acceptable risks and other factors when providing expertise. An agreement to provide advisory services must specify the client's right to receive clear and sufficient information relating to the provision of those services.

Any term or condition that may cause any conflict of interest between the client and the advisory company and its related persons requires the client's consent. Advisers must disclose the information necessary for making investment decisions sufficiently and within an appropriate period of time. In this regard, the information must be correct and up to date and must not have any characteristics that mislead or distort facts. There are also extensive record-keeping requirements.

The company must also maintain a system for handling receive complaints about services promptly and must fulfil reporting obligations to the SEC.

Collateral and/or liquid assets must also be maintained to compensate customers for damage arising from incorrect or incomplete performance of the advisory service. This can include, for example, an insurance policy, a letter of guarantee issued by a financial institution or other collateral as prescribed by the SEC.

In brief, Thai investment advisers are subject to a robust regulatory regime, which features substantial protection for investors. But it is important to bear in mind that SEC regulations provide a number of exceptions and additional requirements. Derivatives advisers are also subject to a regulatory regime, analogous to the above, when advising on derivatives.

Anyone intending to provide investment advisory services or giving advice on derivatives in Thailand should consult counsel to ensure compliance with applicable laws. As for individual investors, they should make certain they are doing business with licensed advisers so that they benefit from the SEC's protection.