

Independent Study Paper Title : Frustration Action in Respect of Tender Offer Regulations
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ABSTRACT

The purpose of this independent study paper is to provide the rationale, the principles and the tendency to adopt specific takeover defensive tactics, during the tender offer period, called frustration actions in connection with the laws and regulations regarding tender offer requirements and frustration actions. If any actions frustrating the tender offer are adopted by the target company or its board of directors, the tender offeror and the minority shareholders may be affected. The Capital Market Supervisory Board empowered by the SEC Act, therefore, issued the Notification No. TorChor. 6/2552 Re: Act or omission to act which is likely to frustrate tender offer of Business, to reduce the possibility of occurrence of the frustration action without the consent from the shareholders of the target company, and to provide an exit for the tender offeror in the case that the business, financial condition, or prospect of the target company is affected by the frustration actions.

It appeared that our current laws and regulations, on one hand, are designed to provide protection for the shareholder of the target company and the tender offeror. On the other hand, some particular situations might happen in the future which will make the current laws and regulations too rigid for our investment market. We have limited the number of frustration actions stated in the above notification of the Capital Market Supervisory Board. Additionally, the Takeover Panel established by the Capital Market Supervisory Board has unclear duty and responsibility and limited power to cope with the issues regarding the decision whether an action is a frustration action. In other words, our laws and regulations regarding frustration actions have contained some limitations and potential problems which tend to occur in the future.

It is recommended that the notification regarding the frustration actions be amended into a broad-sweep type together with specific guidelines or examples. Moreover, the Takeover Panel established by the Capital Market Supervisory Board shall have a broader role so that flexibility of laws and regulations is realized. Particularly, the Takeover Panel shall have more extensive authority in judging any other actions, besides the current regulations, to be restricted frustration actions. All the recommendations are provided in order to develop the existing regulations in connection with the investment via the Stock Exchange of Thailand and our economic status and to truly protect the benefits of the investors as a whole.

