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**Notification of the Securities and Exchange Commission**

**No. KorChor. 30/2546**

**Re: Offering for Sale of Thai Securities Depository Receipt**

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By virtue of Section 14, Section 34 (1), Section 35, Section 56, Section 67, Section 69 (11), Section 70 (9) and Section 71 (5) of the Securities and Exchange Act, B.E. 2535 (1992), the Securities and Exchange Commission hereby issues the following regulations:

**Clause 1.** This Notification shall come into force as from 1 November 2003.

**Clause 2.** In this Notification:

(1) “Executives” and “controlling person” shall have the same meanings as definitions of those terms specified in the Notification of the Securities and Exchange Commission governing Filing and Exemption from Filing of the Registration Statement;

(2) “Depository receipt issuer” means a company which issues a depository receipt (DR);

(3) “Depository receipt” means securities issued by a depository receipt issuer and the underlying securities are the securities issued by another listed company;

(4) “Underlying securities” means any of securities issued by a listed company for support of depository receipt;

(5) “Listed company” means a company whose shares are listed in the Stock Exchange of Thailand;

(6) “Terms and conditions” means terms and conditions on rights and duties between a depository receipt issuer and a listed company and depository receipt holder;

(7) “Registration statement” means a registration statement for an offering for sale of securities;

(8) “Office” means the Office of the Securities and Exchange Commission.

**Clause 3.** A depository receipt issuer may submit an application for the issuance and offer for sale of a depository receipt under this Notification only after having been supported by a listed company which issues underlying securities.

The support of the listed company under the first paragraph shall include the meaning of jointly carrying out and responsible for submitting an application for the issuance and offering for sale of a depository receipt, a registration statement and draft prospectus, and carrying out any act for the compliance in accordance with the commitment specified in the terms and conditions until redemption of the outstanding of depository receipt.

**Clause 4.** In considering whether an application is complied with rules, conditions and procedure specified in this Notification, the Office shall have the following powers:

(1) in the case where an applicant or an offer for sale of newly issued depository receipt has characteristic or form in accordance with rules or conditions to be permitted under this Notification, but there is a fact which may be considered that the real objective or substance of such offering for sale of newly issued depository receipt is to avoid the compliance of provisions under the Securities and Exchange Act, B.E. 2535 (1992) or this Notification, the Office may not grant an approval to offer for sale of depository receipt as determined in the application; provided that, the Office shall clearly notify the applicant on the reason of consideration;

(2) in the case where it is under any of the following characteristics, the Office may not use the rules under this Notification to apply with the consideration of application, or the conditions under this Notification to apply with the offering for sale of newly issued depository receipt. In such case, the Office will focus on the appropriateness and sufficiency of disclosure information and investors protection measure; provided that, the Office may determine conditions for the applicant to comply or refrain to comply with any clause.

(a) benefit from the compliance with the rules or conditions to be exempted is not worthwhile to the cost of compliance and there is a fact that such rules or conditions are not significant for the consideration;

(b) there is the limitation under other laws which makes the applicant not be able to comply in accordance with the rules or conditions to be exempted;

(c) the applicant has other sufficient measures which will be substitute the compliance with the rules and conditions to be exempted.

## **CHAPTER I**

### **A Request for Approval for the Issuance and Offering for sale of Depository Receipt and the Approval**

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**Part 1**  
**Rules on Approval**

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**Clause 5.<sup>1</sup>** A request for approval and the approval on the issuance and offering for sale of newly issued depository receipt shall be as follows:

(1) in the case where it is an offer for sale of depository receipt in the following limiting characteristics, if it is in accordance with the rules specified in clause 7 and clause 8 or clause 8/1, it shall be carried out and shall be deemed to be permitted by the Office;

(a) the underlying securities of a depository receipt are shares except the price of shares that are underlying securities is below market price according to the Notification of the Securities and Exchange Commission on a request for approval and the approval on the offering for sale of newly issued share;

(b) the underlying securities of a depository receipt are bond.

(2) in any other case except for (1), the depository receipt issuer and the listed company which issues underlying securities shall jointly submit an application together with documents and evidences to the Office in accordance with the rules and procedure notified by the Office and pay an application fee in the following rates on the date of filing:

(a) limited offer for sale of depository receipt: 10,000 Baht per each application;

(b) an offer for sale of depository receipt which is not under (a);

1. underlying securities of a depository receipt are shares or a share warrant: 50,000 Baht per each application;

2. underlying securities of a depository receipt are debenture or bond: 10,000 Baht per each application.

The Office shall have the power to inform in writing to summon an applicant to give statement of facts or summon additional documents or evidences as it deems appropriate within the period specified by the Office. In the case where an applicant fails to perform within such period, it shall be deemed that such person does not desire to submit an application furthermore.

**Clause 6.<sup>1</sup>** The Office shall inform the result of consideration to the applicant under clause 5 (2) within the following periods:

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<sup>1</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3), dated 22 April 2005

(1) in case of an offer for sale of depository receipt with limitation, within seven business days as from the date the Office has received the application together with correct and complete documents and evidences;

(2) in case of an offer for sale of depository receipt which is not under (1), within forty-five days as from the date the Office has received the application together with correct and complete documents and evidences.

**Clause 6/1.<sup>2</sup>** The offering for sale of depository receipt in any of the following characteristics shall be deemed to be the offer for sale of depository receipt with limitation:

(1) the offering for sale of depository receipt which having underlying securities are shares. Such offering is the same manner as an offering for sale of newly issued shares within private placement under the Notification of the Securities and Exchange Commission on a request for approval and the approval on the offering for sale of newly issued shares;

<sup>3</sup>(2) the offering for sale of depository receipt which underlying securities are debenture. Such offering is the same manner as a limited offer for sale of newly issued debenture under the Notification of the Securities and Exchange Commission relating to Application for and Approval of Offer for Sale of Newly Issued Debt Securities;

(3) the offering for sale of depository receipt which underlying securities are share warrant. Such offering is the same manner as the offering for sale of newly issued share warrant to private placement under the Notification of the Securities and Exchange Commission on a request for approval and the approval on the offering for sale of newly issued share warrant and underlying shares;

<sup>4</sup>(4) the offering for sale of depository receipt which underlying securities are bond. Such offering is the same manner as the offering for sale of newly issued bond which receives an exemption on filing of registration statement and draft prospectus to the Office under the Notification of the Securities and Exchange Commission relating to the filing and exemption from filing of registration statement of debt securities.

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<sup>1</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.

<sup>2</sup> Added by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: An Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.

<sup>3</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 36/2549 Re: An Offering for Sale of Thai Securities Depository Receipt (No. 4) dated 15 November 2006.

<sup>4</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 36/2549 Re: An Offering for Sale of Thai Securities Depository Receipt (No. 4) dated 15 November 2006.

**Clause 7.<sup>1</sup>** A depository receipt issuer and a listed company which issues underlying securities shall receive an approval on offer for sale of newly issued depository receipt from the Office only when it is under the following rules;

(1) a depository receipt issuer shall have the following characteristics:

(a) being a limited company established under the Thai law;  
(b) having limited objectives only to the issuance of depository receipt which has been permitted to offer for sale under this Notification;

(c) having executives and controlling persons which have qualifications and shall not have any prohibition under the Notification of the Securities and Exchange Commission relating to a request for approval and the approval on the offering for sale of newly issued shares *mutatis mutandis*;

(d) being able to present that there is a maintenance mechanism to ensure that the underlying securities will not less than the outstanding of the depository receipt which has not been redeemed. Such mechanism shall be able to protect the using of underlying securities for other purposes.

(2) a listed company which issues underlying securities shall have the following characteristics:

(a) having complete qualifications to receive approval on offering for sale of underlying securities under the Notification of the Securities and Exchange Commission which is applied to the request for approval and the approval on the offering for sale of such securities, whether underlying securities of the depository receipt are newly issued securities or sold securities of the listed company, and it shall be under the following rules;

1. in case of offer for sale of depository receipt with limitation, it shall be in accordance with the rules specified for the offer for sale of securities to private placement with the limitation or in case of receipt of exemption;

2. in case of offer for sale of depository receipt in other characteristics except for 1., it shall be in accordance with the rules specified for the public offering of securities or in general characteristics;

(b) in the case where underlying securities are newly issued securities, the shareholders meeting of the listed company is informed that the securities to be approved will be use as underlying securities of depository receipt.

The executives and auditor of the listed company agreed to report on changing in the permitted depository receipt according to the rules notified by the Office under Section 59 *mutatis mutandis*.

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<sup>1</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.

The provisions of the first paragraph (b) shall not apply to the limited offer for sale.

(3) a depository receipt to be offered for sale shall have the following characteristics:

(a) underlying securities is securities issued by only one listed company and the underlying rate of one unit of depository receipt shall equal to one underlying security; provided that, underlying securities shall be any of the following types:

1. shares;
2. bond or debentures, but shall not include derivatives debentures;
3. share warrant.

(b) in case of the underlying securities are securities which have term of validity, such depository receipt must have a definite term, and in this case the term of depository receipt shall be terminated prior to the term of underlying securities; provided that, the validity term of depository receipt shall have sufficient term for the depository receipt holder who shall receive such underlying securities having definite validity term to exercise the right or receive benefit from such securities;

(c) having a provision that the depository receipt holder shall receive benefit in the same manner as the underlying securities may receive from the listed company; provided that, after having been deducted the management cost of the depository receipt issuer (only when the terms and conditions allows to do so);

(d) register the limitation of transfer of depository receipt with the Office in case of the limited offer for sale of depository receipt. This is to ensure that the subsequent transfer still have the qualifications under clause 6/1;

(e) having the terms and conditions attached to the depository receipt which are in accordance with clause 8 or clause 8/1 as the case may be.

**Clause 8.** The terms and conditions of the depository receipt shall not contain the provisions which take advantage of contractor unfairly, and shall have been signed by the authorized person and affix the company's seal (if any) of the depository receipt issuer and listed company which issues the underlying securities; provided that, the terms and conditions shall have at least the following particulars and substances:

(1) the rights of the depository receipt holder:

(a) right to receive benefit which shall be the same thing as the underlying securities holder may receive from the listed company. The type and procedure on the contribution of benefit shall be clearly specified;

(b) voting right in the case where underlying securities are shares and a depository receipt issuer agree that the depository receipt holder can exercise voting right in the listed company via the depository receipt issuer. The terms and conditions shall clearly specify the following statements:

1. issues that the depository receipt holder shall have the right to vote;

2. procedure to exercise voting right;

3. the constraints to exercise voting right or right of the depository receipt in making the discretion to exercise voting right (if any).

Provided that, in the case where there is an exercising of voting right, the depository receipt issuer shall not exercise voting right in the listed company in the nature of which is to avoid or violate the Securities and Exchange Act, B.E. 2535 (1992) or the law relating to foreign business.

(c) right to receive the same information as the underlying securities holder such as notice to call shareholders meeting, financial statements and annual report of the listed company or the tender offer etc., provided that, within reasonable time;

(d) any other right (if any) of the depository receipt holder except for (a), (b) or (c), provided that, in the case where such other right is in the kind of legal relation which shall be binding other persons apart from the depository receipt issuer or the listed company, it shall specify the status and relationship of such person obviously.

(2) the burden of cost of the depository receipt holder (if any) which can be determined as necessary and with reasonable rate; provided that, it shall clearly determine the amount or procedure on calculation and collection.

(3) the alteration of the terms and conditions which shall at least specify as follow:

(a) the alteration relating to the right of the depository receipt holder to receive benefit shall be approved by the depository receipt holder of not less than three-fourth of all depository receipt not to be redeemed;

(b) the alteration relating to the voting right in the listed company shall be approved by the depository receipt holder of not less than three-fourth of all depository receipt not to be redeemed and the Office.

(4) the procedure on custody of underlying securities.

(5) the preparation of register of depository receipt holders and the provision that the issuance of depository receipt shall be only for the name depository receipt.

(6) the provisions relating to the registration of depository receipt transfer which specify that the transfer of depository receipt shall be valid only when the person whose name is in the depository receipt or the last transferee has submitted such depository receipt to the transferee with his signature endorsed showing the transfer under Section 53 and the rules specified in the Notification of the Office on rules and procedure on preparation of register of securities holders and the registration of securities transfer *mutatis mutandis*.

(7) the terms and conditions of the redemption of depository receipt which specify that the redemption shall be done by submitting the underlying securities to the depository receipt holder only.

(8) the confirmation of the depository receipt issuer that there shall not be the transfer of underlying securities to any person unless it is the transfer to the securities custodian for the interest of depository receipt holders, including there shall not be any obligation in any matter in such underlying securities.

(9) the confirmation of the listed company that it will not register the transfer or the pledge of underlying securities hold by the depository receipt issuer unless it is the transfer of underlying securities for redemption of depository receipt; provided that, whether the listed company is the registrar of underlying securities itself or appoint another person to be the registrar.

(10) the right to claim for compensation of the depository receipt holder due to the depository receipt issuer or the listed company act or does not act which may not comply with the terms and conditions.

(11) the sample of depository receipt.

**Clause 8/1.**<sup>1</sup> In case of the limited offer for sale of depository receipt, the terms and conditions of the depository receipt shall contain at least the following particulars and substances as specified in Clause 8 (1), (5), (6), (7), (8), (9), and (11).

## **Part 2**

### **The Approval and Conditions for Approval**

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**Clause 9.**<sup>2</sup> Except for the limited offer for sale of depository receipt, the person receiving the approval shall appoint the securities company to be the underwriter and shall perform in accordance with the Notification of the Securities and Exchange Commission relating to the subscription, underwriting and distribution of newly issued securities as the offer for sale of newly issued underlying securities *mutatis mutandis*.

**Clause 10.** The person receiving the approval shall complete the offer for sale of depository receipt within the period specified in the project, or within six months as from the date the Office informed the result of approval, or within the period extended by the Office which shall not exceed twelve months as from the dated the Office has informed the result of approval; provided that, in considering the extension, the Office may summon the person receiving the approval to give additional information or documents.

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<sup>1</sup> Added by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.

<sup>2</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.



**Clause 11.** The depository receipt issuer shall not issue the depository receipt exceeding the existing underlying securities of such depository receipt. After issuing the depository receipt, the depository receipt issuer shall maintain underlying securities to be not less than the outstanding of depository receipt which has not yet been redeemed.

**Clause 12.** The depository receipt shall contain at least the following particulars:

- (1) name and address of the depository receipt issuer;
- (2) specific name and substantial characteristics of the depository receipt;
- (3) name of underlying securities;
- (4) name of the listed company which issues the underlying securities;
- (5) total unit of depository receipt;
- (6) name of the depository receipt holder;
- (7) reference number of the depository receipt holder as determined in the register of depository receipt holders;
- (8) the date of issuance and expiration of depository receipt;
- (9) provision and procedure on redemption of depository receipt;
- (10) the statement specified that the right, duty and responsibility of the depository receipt holder, the depository receipt issuer and the listed company shall be in accordance with the terms and conditions;
- (11) signature of the authorized person to be binding the depository receipt issuer or the registrar of depository receipt;
- (12)<sup>1</sup> the limitation of transfer showing that the depository receipt issuer shall refuse the registration of the transfer of depository receipt in any stage if such transfer is contrary to the limitation of transfer registered with the Office.

**Clause 13.** In the case where the underlying securities are newly issued securities, if the Office has given the approval on the offering for sale of depository receipt, it shall be deemed that the Office has given the approval to the listed company to issue and offer for sale of such newly issued underlying securities including underlying shares (if any).

**Clause 13/1.**<sup>1</sup> In case of the limited offer for sale of depository receipt, the person receiving the approval shall perform in accordance with the following conditions:

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<sup>1</sup> Added by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005

(1) the person receiving the approval shall not advertise the offer for sale of depository receipt to the persons in general, and if there shall be the distribution of documents relating to the depository receipt to be offered for sale or to be offering for sale, it shall be distributed to the specific or necessary persons in order to make such offer for sale of shares to be under the characteristics specified in clause 6/1;

(2) in the case where there is the distribution of supplementing document for offering for sale, the person receiving the approval shall provide a statement specifying the limitation of transfer showing that he shall refuse the registration of transfer of depository receipt in any stage if such transfer is contrary to the limitation of transfer registered with the Office;

(3) in the case where there is any person intending to the person receiving the approval to register the depository receipt transfer, the person receiving the approval shall examine the correctness of such depository receipt transfer, if it appears that such transfer is contrary to the limitation of transfer registered with the Office, he shall refuse to register the transfer of depository receipt except for the transfer by heir.

In the case where the person receiving the approval appoint the registrar of depository receipt, he shall conduct to ensure that the registrar to also perform in accordance with the rules specified in the first paragraph.

**Clause 14.** After having offered for sale of depository receipt, the person receiving the approval shall submit the copy of terms and conditions to the Office together with sale report of the depository receipt.

The alteration of terms and conditions after the issuance of depository receipt shall be done insofar as it is not contrary to or inconsistent with the rules specified in this Notification; provided that, the person receiving the approval shall submit the copy of terms and conditions which have been altered to the Office within fifteen days as from the date of such alteration.

In case of the alteration of terms and conditions which require an approval from the Office, such alteration shall be done only when the Office does not give any notice within seven business days as from the date the Office has received the request for approval for such alteration.

**Clause 15.** In case of the underlying securities are shares, and the listed company, after the issuance of depository receipt, has increased paid-up capital and offer for sale of such capital shares to the shareholders as proportion of shares, if the depository receipt holder has informed to exercise such right and the depository receipt issuer has acquired such capital shares, the depository receipt issuer shall be able to issue additional depository receipts to such depository

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<sup>1</sup> Added by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005

receipt holder. In this regard, the additional depository receipt issued in this case shall be deemed to be permitted by the Office.

**Clause 15/1.**<sup>1</sup> In case of the limited offer for sale of depository receipt, the offeror shall be exempted from the filing of registration statement and draft prospectus to the Office.

## **CHAPTER II**

### **The Filing of Registration Statement and Draft Prospectus**

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**Clause 16.** Prior to each offer for sale of depository receipt or each project, the person offering for sale of depository receipt shall submit two sets of registration statements together with draft prospectus. The offeror has to appoint the financial advisor whose name is in the list approved by the Office has jointly prepared.

The registration statement under the first paragraph shall contain at least the following particulars:

(1) information on depository receipt issuer which contains at least the particulars under section 69 (1) to (10);

(2) information relating to depository receipt to be offered for sale and the terms and conditions of the depository receipt, including the documents showing the obligation under depository receipt which other person apart from the depository receipt issuer or the listed company is a contractor (if any);

(3) information relating to underlying company and underlying securities which shall contain the same information as those to be disclosed in the registration statement as specified for the offer for sale of underlying securities;

(4) certification of correctness of information under part 4 of the form 69-1 annexed to the Notification of the Securities and Exchange Commission relating to the Filing and the Exemption from Filing of Registration Statement of Offer for Sale of Securities *mutatis mutandis*.

The certification of correctness of information under the first paragraph shall be carried out as follow:

(a) the depository receipt issuer certifies the information under (1) and (2);

(b) the listed company certifies the information under (2) and (3);

(c) the underlying securities' owner (if any) certifies the information under (3);

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<sup>1</sup> Added by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005.

(d) the financial advisor certifies the information under (1), (2) and (3).

**Clause 17.** Subject to the provisions of section 68 and section 75, after the person offering for sale of depository receipt has submitted a registration statement and draft prospectus to the Office and has paid for registration fees under the rules and procedure specified by the Office, the registration statement and draft prospectus shall be effective upon the lapse of fifteen days as from the date of receipt of such registration statement and draft prospectus by the Office.

**Clause 18.** Apart from those specified in Clause 16 and Clause 17, the provisions of the chapter relating to the filing and the becoming of effective of registration statement and draft prospectus of the Notification of the Securities and Exchange Commission relating to the Filing and the Exemption from Filing of Registration Statement of Offer for Sale of Securities *mutatis mutandis*.

**Clause 19.**<sup>1</sup> The person offering for sale of depository receipt shall prepare sale and redemption report to the Office under the following rules:

(1) in case of the limited offer for sale of depository receipt, it shall be reported to the Office with fifteen days as from the date of closing the offer or the last day of each redemption. Such report has to contain the following details:

(a) the date of offer for sale or the date of redemption of depository receipt;

(b) type, characteristic and specific name of depository receipt (if any);

(c) the total unit of depository receipt to be offered for sale and the outstanding unit of depository receipt, or the total unit of depository receipt redeemed;

(d) the price of depository receipt to be offered for sale or redeemed, in case of underlying securities are shares, it shall specify the market price of such shares, the date of calculation, source of the market price together with the calculation method of such market price;

(e) name and address of the purchaser or the holder of depository receipt which has been redeemed, and in case of the report of depository receipt sale, it shall be specified the unit of which each purchaser of depository receipt has been distributed;

(f) name, mailing address and telephone number of the person responsible for the sale and redemption report.

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<sup>1</sup> Amended by the Notification of the Securities and Exchange Commission No. KorChor. 25/2548 Re: Offering for Sale of Thai Securities Depository Receipt (No. 3) dated 22 April 2005

(2) in any other case apart from (1), it shall be reported to the Office under the rules specified in the Notification of the Office of Securities and Exchange Commission relating to the Public Securities Offering Report of Sale. Such report will be the same manner as the sale report of the underlying securities. In this regard, such report has to contain the additional details relating to the depository receipt to be offered for sale or redeemed.

**Clause 20.** The company which issues the depository receipt shall report the financial position and business operation of the company under section 56 within the period specified by the Office or after having received the order of the Office; provide that, such report shall be in accordance with the rules as specified under the Notification of the Securities and Exchange Commission on Rules, Conditions and Procedure on the Report of Disclosure of Information on Financial Position and Business Operation of the Company Issuing Securities *mutatis mutandis*.

Notified this 27<sup>th</sup> Day of October 2003.

Suchat Jaovisidha  
(Captain Suchat Jaovisidha)  
Minister of Finance  
Chairman of the Securities and Exchange Commission