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**Notification of the Securities and Exchange Commission
No. KorChor. 12/2543**

Re: Application for and Approval of Offer for Sale of Newly Issued Shares

By virtue of Section 14 and Section 35 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 June 2000.

Clause 2. The following Notifications shall be repealed:

(1) Notification of the Securities and Exchange Commission Re: Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Shares dated 18 May 1992;

(2) Notification of the Securities and Exchange Commission No. KorChor. 25/2539 Re: Amendment to the Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Shares (No. 2) dated 8 November 1996;

(3) Notification of the Securities and Exchange Commission No. KorChor. 6/2541 Re: Amendment to the Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Shares (No. 3) dated 16 February 1998; and

(4) Notification of the Securities and Exchange Commission No. KorChor. 26/2541 Re: Amendment to the Rules, Conditions and Procedures for Application for and Approval of Offer for Sale of Newly Issued Shares (No. 4) dated 11 June 1998.

Clause 3. In this Notification and the application form for offer for sale of newly issued shares attached hereto:

(1)²¹ The terms “institutional investors”, “listed company”, “parent company”, “subsidiary”, “affiliate”, “executive”, “major shareholders”, “controlling person” and “consolidated financial statements” shall have the same meaning as defined in the Notification of the Securities and Exchange Commission concerning filing and exemption from filing of registration statement for securities offering.

(1/1)¹³ “Convertible securities” means convertible debentures or share warrants.

(1/2)²¹ “Offer for sale of newly issued shares with discount” means an offer for sale of shares or convertible securities where the offering price is fixed at lower than the market price.

(1/3)²¹ “Market price” means a market price as calculated in accordance with the rules prescribed in Clause 4/4.

(1/4)²¹ “Offering price” means an offering price as calculated in accordance with the rules prescribed in Clause 4/4.

(2) “Person who may have conflict of interest” means any of the following persons:

- (a) An executive of a public limited company;
- (b) A major shareholder of a public limited company;
- (c) A controlling person of a public limited company;
- (d) Any person related by blood, marriage or registration under applicable laws to the person referred to in (a), (b) or (c), such as father, mother, spouse, children or other close relatives;
- (e) Any juristic person in which the person referred to in (a), (b) or (c) holds shares or has controlling power or any other interest whether directly or indirectly in material aspects.

(3)¹⁶ Repealed by the Notification of the Securities and Exchange Commission No. KorChor. 27/2546.

(4) “Connected transaction” means a connected transaction by virtue of the Notification of the Stock Exchange of Thailand concerning rules, procedures and disclosure of connected transactions by a listed company.

(5) “Acquisition or disposition of assets” means an acquisition or a disposition of assets by virtue of the Notification of the Stock Exchange of Thailand concerning rules, procedures and disclosure of the acquisition or disposition of assets by a listed company.

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

Clause 4. A public limited company or promoters of a public limited company wishing to offer for sale of newly issued shares shall be granted approval for such offer by the Office upon its/their compliance with the rules, conditions and procedures as prescribed herein.

¹⁶In the case where the Office has doubted that an applicant does not possess the qualifications required under the approval criteria or undertakes any act not in compliance with the rules prescribed in this Notification, the Office shall be empowered to demand the applicant to prove against such doubt. In this regard, the Office will continue to consider the application only if the applicant is able to prove against such doubt.

Clause 4/1.¹³ A public limited company shall be granted approval for an offer for sale of newly issued shares by the Office under this Notification only if

such public limited company does not have any bought-back shares remain unsold, except in the case where the shares bought back will be offered for sale simultaneously with the newly issued shares, and provided that an allocation of the shares bought back shall be in priority to that of the newly issued shares.

Clause 4/2.¹³ In the case where a public limited company issues convertible securities to any person without consideration, such public limited company shall be granted approval for an offer for sale of newly issued shares only if it has complied with the rules governing the allocation of underlying shares for convertible securities set out in the Notifications of the Securities and Exchange Commission concerning application for and approval of an offer for sale of convertible securities.

Clause 4/3.¹⁵ In considering whether or not an application complies with the rules, conditions, and procedures prescribed in this Notification, the Office shall be empowered to do the followings:

(1) The Office may reject the application if it is found that the purpose or the substance of the applicant or an offer for sale of shares, despite having the required characteristics or meeting the criteria or conditions for approval set out in this Notification, is to avoid compliance with any provision of the laws concerning securities and exchange or this Notification, in which case the Office shall clearly notify the applicant of the ground supporting its rejection;

(2) The Office may, by primarily taking into account the suitability and sufficiency of the information used for the purposes of making investment decision as well as the measures for investors protection, waive certain criteria in considering an application or waive certain conditions to be enforced upon the offer for sale of shares being approved under this Notification, provided that the Office may impose other conditions which require the applicant to act or omit from acting with regard to an offer for sale of shares which falls within one of the following characteristics:

(a) Costs outweigh any benefit which may derive from compliance with the criteria or conditions to be waived, and it is clear that such criteria or conditions are immaterial to the consideration for such approval;

(b) The applicant is subject to limitations under other laws which restrict it from compliance with the criteria or conditions to be waived; or

(c) The applicant has provided other sufficient measures in lieu of its compliance with the criteria or conditions to be waived.

Clause 4/4.²¹ For a purpose of considering whether any offer for sale of newly issued shares by a listed company is deemed to be an offer for sale of newly issued shares with discount, the market price and offering price shall be calculated as follows:

(1) The market price shall be calculated from any one of the following prices:

(a) The weighted average closing price of the shares listed on the Stock Exchange of Thailand during the period of at least seven and not

exceeding fifteen consecutive business days prior to the date on which the offering price is determined, in which case the determination date of the offering price shall be as follows:

1. the date on which the board of directors of the company approves to propose to the shareholders' meeting for consideration and approval of an increase of the company's share capital by way of an offer for sale of shares at a fixed price;

2. the first day of an offering period, in the case where the board of directors of the company approves to propose to the shareholders' meeting for consideration and approval of an increase of the company's share capital by way of an offer for sale of shares at a floating price;

(b) The price determined by using comparative analysis between demand to purchase and supply of the company's newly issued shares such as book building, etc;

(c) The fair price valued by a financial adviser whose name appears in the list of financial advisors approved by the Office.

(2) The offering price shall be calculated as follows:

(a) in case of an offer for sale of shares, the offering price to investors shall be used;

(b) in case of an offer for sale of share warrants, the aggregate amount of the offering price and the exercise price of such share warrants;

(c) in case of an offer for sale of shares together with share warrants, the outcome of the offering price of the shares less the difference between the market price and the exercise price of such share warrants;

(d) in case of an offer for sale of convertible debentures, the outcome of the offering price of convertible debentures divided by the conversion ratio.

Clause 5. In considering an application, the Office shall be empowered to request the applicant in writing to provide explanation in person or to submit additional documents within the period prescribed by the Office.

If the applicant fails to explain in person or to submit the required documents within the period prescribed by the Office, it shall be deemed that the applicant no longer intends to apply for an approval for the offer for sale of newly issued shares.

Chapter 1

Offer for Sale of Newly Issued Shares to Certain Investors (Private Placement)

Part 1

Application and Approval

Clause 6. An offer for sale of newly issued shares to certain investors (private placement) means an offer for sale which falls within one of the following criteria:

(1) An offer for sale of newly issued shares with an aggregate value not exceeding Baht twenty million during a twelve-month period, provided that the aggregate value of such offering shall be based on the offering price of such shares;

(2) An offer for sale of newly issued shares to certain investors which do not exceed thirty five investors during a twelve-month period;

(3)²¹ An offer for sale of newly issued shares made to the institutional investors.

The aggregate value of the offering referred to in (1) or the number of investors referred to in (2) shall exclude the value of any offer made to the institutional investors referred to in (3), regardless of whether such offering is made simultaneously or at different time during a twelve-month period.

Clause 7.²¹ Unless specifically prescribed in Part 1/1, a public limited company or promoters of a public limited company shall be deemed to have received approval from the Office to make the private placement of newly issued shares.

Clause 7/1.²¹ Repealed by the Notification of the Securities and Exchange Commission No. KorChor. 15/2548.

Clause 7/2.²¹ Repealed by the Notification of the Securities and Exchange Commission No. KorChor. 15/2548.

Clause 7/3.²¹ Repealed by the Notification of the Securities and Exchange Commission No. KorChor. 15/2548.

Clause 8.²¹ An offer for sale of newly issued shares to any mutual fund which has been established or made its investment in the manner to avoid compliance with any criteria concerning an offer for sale of newly issued shares under Chapter 2 shall not be deemed an offer for sale of newly issued shares to the institutional investors referred to in Clause 6(3).

Unless otherwise approved by the Office under the third paragraph below, an offer for sale of newly issued shares to any mutual fund which falls within one

of the following characteristics shall not be deemed an offer for sale of newly issued shares to the institutional investors referred to in Clause 6(3):

(1) The mutual fund which does not restrict its offer for sale of investment units solely to the institutional investors;

(2) The offer for sale of newly issued shares to the mutual fund which is made pursuant to an agreement or a contract between an offeror of securities and a management company, under which the management company is not required to exercise its discretion in making its investment decision as regard the shares being offered in the same level exercised by it in its normal fund management; and

(3) The mutual fund that makes its investment in one of the following manners:

(a) the value of each investment made in the shares offered by a company is more than fifty per cent of its net asset value; or

(b) the value of each investment made in newly issued shares of a company is more than fifty per cent of the total value of each offering of the newly issue shares.

If an offeror wishes to make its offer for sale of newly issued shares to a mutual fund in the manners prescribed in the second paragraph as an offer for sale of securities to the institutional investors, the offeror shall file an application together with explanatory statements and supporting documents for approval with the Office. The Office shall be empowered to grant the approval to such offeror to make such offer for sale of newly issued shares to the mutual fund as the institutional investors.

For the purpose of this Clause,

“Mutual fund” means any mutual fund established under the Securities and Exchange Act B.E. 2535 (1992), or such other investment schemes approved under the laws governing the undertaking of finance business, securities business and credit foncier business, which are managed by securities companies licensed to undertake securities business in the category of mutual fund management.

“Management company” means any securities company licensed to undertake securities business in the category of mutual fund management.

Part 1/1²¹

Offer for Sale of Newly Issued Shares with Discount

Clause 8/1. A listed company which sets an offering price not lower than ninety per cent of the market price is deemed to receive approval from the Office for making an offer for sale of newly issued shares with discount under this Chapter if it complies with the conditions for granting approval prescribed in Part 2 of this Chapter.

Clause 8/2. A listed company wishing to make an offer for sale of newly issued shares with discount by setting the offering price lower than ninety per cent of the market price in accordance with this Chapter shall file an application for approval together with supporting documents with the Office and pay an application fee of Baht 10,000 per application on the filing date.

In considering the application filed under the first paragraph, the Office shall notify the result of its consideration within seven business days from the date on which the Office receives the application together with supporting documents which are complete and accurate. If the Office does not notify the result within the said period, the applicant shall be deemed to have received approval from the date following the expiration of such period.

Clause 8/3. An approval for an offer for sale of newly issued shares shall be granted to the applicant under Clause 8/2 if:

(1) it sends a notice calling a shareholders' meeting to approve the offer for sale of newly issued shares with discount to the shareholders not less than fourteen days prior to the meeting date;

(2) the notice calling for the meeting referred to in paragraph (1) above contains the information which is material for the shareholders to make their decision and shall at least include the following particulars:

(a) objectives for the offer for sale of newly issued shares with discount;

(b) details of the shares being offered including the total number of shares to be offered, the offering price or the exercise price of convertible securities which shall be at a fixed price or with a fixed maximum discount;

(c) the market price used as reference for the offering price including the calculation method;

(d) name of the persons expected to be offered (if possible), but in case of an offer for sale at a fixed price, name of the persons expected to make an offer must be identified;

(e) any effect to the shareholders from the offer for sale of securities currently applying for an approval, provided that it shall, at least, specify the effect concerning price dilution, profit sharing or control dilution on the existing shareholders;

(f) the right of the shareholders to object to the offer for sale of newly issued shares with discount as specified under paragraph (4) below;

(g) opinions of the board of directors indicating the necessity for the offer for sale of newly issued shares with discount together with explanation on the worthiness in terms of the benefit to be received by the company in comparison with the loss to be suffered by the company from the difference between the offering price and the market price, including the appropriateness and reason for using the said market price and determination on the said offering price;

(h) other information as prescribed by the Office;

(3) the instrument of proxy shall be delivered together with the notice calling for the shareholders' meeting and details of at least one independent director to whom the shareholders who cannot attend the meeting and vote by themselves may appoint to vote on their behalf, and in the case where the said independent director may be allocated the securities seeking the approval, the special interest of such independent director shall also be identified;

(4) the resolution of the shareholders' meeting approving the offer for sale of newly issued shares with discount shall be passed with the votes of no less than three quarters of the total number of votes of the shareholders attending the meeting and entitled to vote, and without any objection from shareholders holding the shares in aggregate of ten per cent or more of the total number of votes of the shareholders attending the meeting;

(5) the resolution of the shareholders' meeting under paragraph (4) concerning the calculation of the market price under Clause 4/4 (1) (a) (2) shall have been passed no longer than one year prior to the filing date of the application. However, in the case where the calculation of the market price is made by other method, such resolution shall be passed within one of the following periods:

(a) ninety days prior to the filing date of the application;

(b) one hundred and eighty days prior to the filing date of the application, only in the case where the shareholders' meeting approving an offer for sale of newly issued shares with discount determines that there is necessity and appropriateness causing the company to be unable to file an application to the Office within the period specified in paragraph (a).

Clause 8/4. The provisions in this Part shall not apply to any of the following offers for sale of newly issued shares with discount:

(1) An offer for sale of newly issued shares under the Notification of the Securities and Exchange Commission concerning employee stock option plan (ESOP);

(2) An offer for sale of newly issued shares of the company obligated to increase its registered capital under the restructuring plan approved by the court under the bankruptcy law;

(3) An offer for sale of newly issued shares for an exercise of right under convertible securities offered for the first time to the shareholders in proportion to their shareholding, regardless of whether or not the person who

exercises the right to convert into or to purchase the shares is the shareholder of the company at the time of exercising;

(4) Such other case which is necessary and appropriate and of which a waiver is granted by the Office.

Part 2

Conditions for Approval

Clause 9.²¹ The person approved under Part 1 and Part 1/1 of this Chapter shall comply with the following conditions:

(1) The approved person is prohibited from advertising an offer for sale of newly issued shares to the public, and if a distribution of the documents concerning the shares to be offered or being offered is required, the approved person shall distribute such documents to specific persons or such other persons as necessary or required solely to ensure that such offering falls within the criteria prescribed in Clause 6(1), (2) or (3), and the approved person shall arrange to include the statement referred to in paragraph (2) below in the said documents;

(2) Within two years from the registration date of the change of paid-up share capital, the approved person shall not sign to certify the accuracy of information in the registration statement and draft prospectus for an offer for sale of such shares to the public filed with the Office by its shareholder, or arrange to have such shares listed on the Stock Exchange of Thailand unless an approval for an offer for sale of newly issued shares to the public under Chapter 2 is granted to the approved person by the Office or the approved person is a listed company.

Clause 9/1.²¹ The person approved under Part 1/1 shall complete the sale of shares as approved within the following periods:

(1) Within one year from the date on which the shareholders' meeting resolves to approve an offer for sale of newly issued shares or to confirm the former resolution for an offer for sale of newly issued shares by the person approved under Clause 8/1;

(2) Within one year from the date on which the Office notifies its approval to the approved person pursuant to Clause 8/2.

Clause 10. In order to ensure that an offer for sale of newly issued shares is actually made to certain investors (private placement) or to prevent the shares from being distributed to the public in breach of the intention of granting the approval for private placement, the Office shall be empowered to impose additional conditions with which the approved person is required to comply after the relevant approval is given.

Chapter 2

Offer for Sale of Newly Issued Shares to the Public

Part 1

Application and Approval

Clause 11. A public limited company wishing to make an offer for sale of newly issued shares to the public shall file an application together with supporting documents with the Office in the form and in accordance with the procedures prescribed by the Office.

The filing of an application in the first paragraph shall be jointly prepared by a financial advisor whose name appears in the list of financial advisors approved by the Office.

Clause 12. An applicant shall pay an application fee in the amount of Baht 50,000 per application on the filing date.

In the case where it is necessary for the Office to visit the place of business or any other establishments of the applicant or its subsidiary located outside of Bangkok or its periphery, the applicant shall be responsible for all of the accommodation and travelling expenses incurred from such visit as prescribed by the Office.

Clause 13.¹⁶ Except for the cases prescribed in Clause 19, the applicant will be granted an approval for an offer for sale of newly issued shares to the public only if the applicant can prove to the satisfaction of the Office that it meets the criteria on good corporate governance as well as the following qualifications:

(1) Protection of shareholders' right and fair treatment of shareholders:

(a) The applicant's shareholding structure is clear, fair and in compliance with the criteria prescribed in Clause 14;

(b) The applicant's executives and major shareholders have no other interest which may be in conflict with the best interest of the company unless the applicant can demonstrate that it has adopted a mechanism which ensures that the management of the company will be for the best interest of the company and its shareholders as a whole;

(c) The articles of association of the applicant and its subsidiary comply with the criteria in Clause 15;

(d) There is no reason to doubt that the management mechanism will neither protect the shareholders' right nor provide the fair treatment to the shareholders.

(2)²⁰ Roles, duties and responsibilities of executives and controlling persons:

(a) The board of directors has good understanding of its roles, duties and responsibilities to the shareholders who are the general public and can demonstrate that it has the ability to perform such duties;

(b) The structure and management of the board of directors shall have an adequate check and balance system, which shall at least comply with the criteria prescribed in Clause 16;

(c) The applicant's executives must be the persons whose names appear in the list of executives under the Notification of the Office of the Securities and Exchange Commission concerning requirements of executives of the issuer of securities;

In the case where the applicant is a private college or university under the law concerning private higher education institutions, council members of such private college or university shall not possess any prohibited characteristics prescribed in the Notification of the Office of the Securities and Exchange Commission concerning requirements of executives of the issuer of securities *mutatis mutandis*;

(d) Controlling persons shall not have any prohibited characteristics as prescribed in the Notification of the Office of the Securities and Exchange Commission concerning requirements of executives of the issuer of securities, *mutatis mutandis*;

(3) Disclosure of information:

(a) The information disclosed to the public shall be complete and adequate for decision making and contain no statement which may mislead investors;

(b) The financial statements and the consolidated financial statements of the latest accounting year of the applicant and the most recent quarterly financial statements prior to filing the application shall be accurate, creditable and complied with the criteria prescribed in Clause 17/1;

(c) There is no reason to doubt that the applicant has no adequate system to prepare and perform reliable and ongoing disclosure of information in accordance with the prescribed criteria.

(4) Other qualifications:

(a) The applicant's core business is beneficial to the economy and society of the country; it is not involved in illegal business activities and is not in doubt of being unable to operate on a going-concern basis in the long-term;

(b) The applicant's business operations and that of its subsidiary do not cause any environmental effect beyond the limit prescribed by law in material aspect or are not subject to any charge or in dispute with state agencies in relation thereto;

(c) There is no record on violation or failure to comply with the material conditions of the approval for an offer for sale of securities;

(d) This offer for sale of shares obtains express approval from the resolution of the shareholders' meeting having been passed for no more than one year from the filing date of the application.

Clause 14.¹⁶ The shareholding structures of the applicant, its subsidiary or affiliate shall comply with the following criteria:

(1) The structures shall clearly reflect the controlling power and the interest of the shareholders;

(2) There is no cross-shareholding amongst the applicant, its major shareholders, subsidiary and affiliate;

(3) There is no person who may have conflict of interest holding shares in its subsidiary or affiliate in excess of ten per cent of the total issued shares of that subsidiary or affiliate, except where the applicant is able to demonstrate that such shareholding structure of the subsidiary or affiliate is intended for the best interest of the applicant.

Clause 15.¹⁶ The articles of association of the applicant and its subsidiary shall contain the provision concerning requirement of shareholders' approval for engaging in connected transaction and acquisition or disposition of assets by the applicant or its subsidiary, provided that such provision shall be consistent with the regulations of the Stock Exchange of Thailand.

If there is any necessity which causes its subsidiary to be unable to arrange for its articles of association to comply with the first paragraph, the applicant must be able to demonstrate that it has adopted certain measures which ensure that such subsidiary will engage in the above transactions in compliance with the regulations of the Stock Exchange of Thailand.

Clause 16.²¹ The structure of the board of directors and the management of the applicant shall comply with the following criteria:

(1) There shall be at least three independent directors whose qualifications comply with the following criteria:

(a) holding shares not exceeding five per cent of the total shares with voting rights of the company, its parent company, subsidiary, affiliate or juristic person which may have conflict of interest;

(b) not being an employee, staff, advisor, who receives salary, or controlling person of the company, its parent company, subsidiary, affiliate or juristic person who may have conflict of interest;

(c) not being a person related by blood or registration under laws, such as father, mother, spouse, brothers, sisters and children, including spouses of the children, of its executives, major shareholders, controlling person, or nominees as executive or controlling person of the company or its subsidiary;

(d) having no business relationship with the company, its parent company, subsidiary, affiliate or juristic person who may have conflict of interest, in the manner which may interfere with his/her independent judgement, and not

possessing any qualification which makes him/her incapable of expressing independent opinion with regard to the company's business operation;

(2) There shall be the audit committee with at least three members, whose qualifications comply with the following criteria:

(a) the audit committee is appointed by the board of directors or the shareholders' meeting of the company whereby each member shall be an independent director pursuant to paragraph (1) and shall have the same qualifications and duties as those prescribed in the regulations of the Stock Exchange of Thailand concerning the qualifications and scope of responsibilities of the audit committee; and

(b) the audit committee must have sufficient knowledge and experiences to review the credibility of financial statements as well as to perform other duties as audit committee director;

(3) In the case where the board of directors appoints any manager or other person to act on its behalf in any matter, such appointment shall be made in accordance with the following criteria:

(a) It shall be made in writing or clearly recorded in the minutes as the resolution of the board of directors' meeting;

(b) It shall clearly state the scope of authority of the appointed person provided that such scope shall exclude approval for any transactions in which the appointed person or the person who may have conflict of interest has interest or conflict of interest.

Clause 17.²⁰ Repealed by the Notification of the Securities and Exchange Commission No. KorChor. 6/2548.

Clause 17/1.¹⁶ The financial statements of the applicant and the consolidated financial statements of the most recent accounting year and the latest quarterly financial statements prior to the application filing shall be prepared in accordance with the following criteria:

(1) They shall be prepared in compliance with the accounting standard applicable to a public limited company and other criteria issued by virtue of Section 56;

(2) They shall be audited or reviewed (in case of quarterly financial statements) by an auditor whose name appears in the list of auditors approved by the Office, provided that the said auditor has fully performed his/her duties according to the auditing standard;

(3) The audit report prepared by the auditor pursuant to paragraph (2) shall not express:

(a) a disclaimed opinion on the financial statements of the applicant and the consolidated financial statements or an adverse opinion;

(b) a qualified opinion due to any material accounting item that does not comply with the accounting standard;

(c) a qualified opinion due to the limitation on a scope of audit resulting from any action or failure to act by the applicant or its executives.

Clause 18. In the case where the applicant under Clause 13 is a public limited company whose core business is holding shares in other companies (holding company) and does not engage in any other material business, the applicant shall meet the following qualifications:

(1) It shall hold shares in its subsidiary which is its core business not less than seventy five per cent of the total shares with voting rights of the subsidiary, except in case of necessity where a waiver is granted by the Office;

(2) Its aggregated investments in its subsidiary and affiliate shall not be less than seventy five per cent of the total value of investments in securities of the applicant, except in case of necessity where a waiver is granted by the Office, and shall have adopted a measure which requires prior approval from a shareholders' meeting for any material change in policy or scope of investment;

(3) The applicant is able to demonstrate that it has the power to manage and control the business of its subsidiary referred to in paragraph (1);

(4) Its subsidiary referred to in paragraph (1) shall possess all the qualifications required under Clause 13 regardless of whether such subsidiary is a limited company or a public limited company.

Clause 19.¹³ In the case where the applicant is a listed company, an approval for an offer for sale of newly issued shares will be granted in accordance with the following criteria:

(1)¹³ Unless a waiver is granted by the Office, the applicant has not fail to submit its financial statements or reports of its financial conditions and result of operations to the Office or the Stock Exchange of Thailand in compliance with Section 56 or Section 199 in conjunction with Section 56, as the case may be; or has not violated or failed to comply with the criteria concerning the preparation of financial statements or reports of the financial conditions and result of operations of the company in material aspect; or has not violated or failed to comply with the criteria concerning reports to be made to the Office or the Stock Exchange of Thailand in compliance with Section 57 or Section 199 in conjunction with Section 57, as the case may be; or has not been required to comply with the order of the Office or the Stock Exchange of Thailand under Section 58 or Section 199 in conjunction with Section 58, as the case may be;

(2)²⁰ Unless a waiver is granted by the Office, the applicant shall possess the characteristics which meet the criteria set forth in Clause 13, Clause 14, Clause 15 and Clause 16 *mutatis mutandis*. If the applicant does not possess the characteristics stipulated in Clause 14(2) due to its cross-shareholding, an approval for an offer for sale of newly shares may be granted only if the applicant is able to demonstrate that such cross-shareholding is necessary and appropriate for the best interest of the business and does not cause any unfair treatment to the shareholders.

¹⁶A waiver for the above offering may be granted by the Office to the applicant who does not possess the characteristics stipulated in Clause 14(2) and is

unable to demonstrate as required under the first paragraph if such applicant is bound to amend its shareholding structure to be in compliance with the criteria prescribed under this Notification by 31 December 2008;

(3)²¹ The applicant wishing to make an offer for sale of newly issued shares with discount where the offering price is fixed at lower than ninety per cent of the market price and is made specifically to certain investors (private placement) but where such offering does not possess the characteristics stipulated in Clause 8/4), then the applicant shall comply with Clause 8/3, *mutatis mutandis*.

Clause 20.²⁰ If it appears that the applicant does not possess the characteristics stipulated in Clauses 13(2)(c) second paragraph, (2)(d) or (4)(c) or Clause 19(2) in conjunction with Clause 13(2)(c) second paragraph, (2)(d) or (4)(c), the Office shall, in notifying its decision on the application, be empowered to prescribe any timeframe or stipulate any condition in respect of the applicant's subsequent applications, by taking into account the significance of the prohibited characteristics or the violation or non-compliance of the conditions attached to the approval for an offer for sale of securities on a case-by-case basis, provided that in case of imposition of timeframe, the period shall not exceed fifteen years from the date on which the Office notifies its decision on the application to the applicant.

After the expiration of the timeframe prescribed by the Office under the first paragraph or after the applicant has complied with the conditions prescribed by the Office, the Office shall disregard the underlying fact on which the order under the first paragraph has been made in its consideration of subsequent applications of the applicant.

Where the Office views that the event leading to the applicant's non-compliance with the characteristics set out under Clause 13(2)(c) second paragraph (2)(d) or (4)(c) or Clause 19(2) in conjunction with Clause 13 (2)(c) second paragraph, (2)(d) or (4)(c) is not material, or the event has already been rectified or a preventive measure thereof has already been adopted, the Office may disregard such non-compliance in its consideration of the application.

Part 2

Conditions for Approval

Clause 21. The person approved under Part 1 of this Chapter shall comply with the conditions prescribed in this Part.

Clause 22. If the Office has found after the approval is granted that, due to any change, the person approved under Part 1 fails to meet the characteristics prescribed in the approval criteria and is unable to rectify to meet the characteristics within the period prescribed by the Office, the Office shall notify the person in writing to suspend its offer for sale of shares which has been approved and it shall be deemed that the approval concerning an offer for sale in respect of the newly issued shares not having been offered or remaining unsubscribed is terminated.

Clause 23.¹⁵ The approved person shall comply with the following conditions:

(1) An approved person wishing to have its shares listed on the Stock Exchange of Thailand shall not set the price of any portion of the shares offered for sale to the public higher than those allocated to designated persons, irrespective of whether or not the allocation is made during the same period of, or within ninety days prior to, the public offering, unless such offer for sale to designated persons meets one of the following criteria:

(a) It is an offer for sale to the directors and employees of the company or its subsidiary as approved by the board of directors or the shareholders' meeting of the company;

(b) It is an offer for sale to any person in accordance with the privatization of the state enterprise as approved by the cabinet;

(c) It is a case deemed to be necessary and appropriate for which a waiver is granted by the Office.

(2) An approved person whose offer falls under the following criteria shall include warning statement in the registration statement and draft prospectus to ensure that investors are aware of the relevant facts and understand the risks of possible reduction in the share price once the shares are traded in the Stock Exchange of Thailand:

(a) An approved person intends to list the offered shares for the first time in the Stock Exchange of Thailand; and

(b) An approved person has offered for sale of the shares of the same category of the shares under this offer to any person at a price lower than that of this offer during the six-month period prior to this offer and the aggregate number of shares having been offered during such period exceeds ten per cent of the total number of shares under this offer.

(3) From the effective date of the registration statement and draft prospectus, if an approved person wishes to make an advertisement concerning its securities in the manner other than a distribution of the prospectus, the approved person shall submit for prior consideration by the Office the information which will be used for such advertisement and shall proceed with such advertisement if the Office does not notify its objection within three business days from the date on which the Office receives such information. In this regard, the Office may also require that the approved person comply with the criteria concerning a provision of a warning statement in the advertisement prescribed in the Notification of the Securities and Exchange Commission concerning dissemination of information concerning securities offering prior to the date on which the registration statement and draft prospectus become effective, *mutatis mutandis*.

(4) An approved person shall complete its offer for sale of shares within six months from the date on which the Office notifies its approval. If the approved person is unable to complete the offer within such period and wishes to continue to make such offer, it shall request for an extension of the offering period in writing with the Office at least thirty days prior to the expiration. In this regard, the

approved person shall provide the Office with its rationale for such request together with any information concerning material changes to its characteristics in accordance with Clause 13 (if any). The Office shall be empowered to extend the offering period as deemed appropriate, provided that such extension shall not exceed twelve (12) months from the date on which the Office notifies its initial approval.

(5) From the date on which the Office notifies its approval for an offer for sale of newly issued shares to the date prior to the registration of the change of paid-up share capital in respect of the offer, the approved person shall not call a shareholders' meeting to approve any resolution which may affect any person wishing to invest in such approved newly issued shares, unless a waiver is granted by the Office due to necessity and appropriateness.

(6) During the period which an approved person is obliged to comply with the criteria prescribed in the Notification of the Securities and Exchange Commission issued by virtue of Section 56, the approved person shall comply with its obligations given under the application or the registration statement and draft prospectus, and shall ensure that its major shareholders, executives, and controlling persons comply with such conditions, unless otherwise resolved by the shareholders' meeting.

(7) Within one year from the date on which the registration statement and draft prospectus concerning the approved offer for sale of shares become effective, if the financial advisor who has jointly prepared the application wishes to obtain or review any information in order to perform its duties required in connection with the disclosure of material information affecting the approved person under the Notification of the Securities and Exchange Commission concerning the approval and scope of responsibilities of financial advisors, the approved person shall cooperate in providing such information to the financial advisor.

In the case where the approved person is a public limited company engaging in the core business of a holding company, the approved person shall supervise and control its subsidiary under Clause 18(1) to comply with the conditions prescribed in (5) and (6) of the first paragraph, *mutatis mutandis*.

Chapter 3

Transitional Provisions

Clause 24. Any application for an offer for sale of shares having already been filed by an applicant together with accurate and complete supporting documents in accordance with the Notification of the Securities and Exchange Commission Re: Rules, Conditions and Procedures for Application for and Approval of an Offer for Sale of Newly Issued Shares dated 18 May 1992 and the result of its consideration of which has not yet been notified by the Office prior to the effective date of this Notification, shall be considered by the Office pursuant to the rules, conditions and procedures prescribed in the said Notification. However, the approved person shall also be obliged to comply with the post-approval conditions under Clause 23 of this Notification.

Clause 25. If a public limited company having shares listed on the Stock Exchange of Thailand and not being subject to possible delisting has filed the registration statement and draft prospectus together with accurate and complete supporting documents with the Office prior to the effective date of this Notification, such public limited company shall:

(1) be deemed to have been granted an approval for the offer for sale of newly issued shares from the Office pursuant to Clause 2 *bis* of the Notification of the Securities and Exchange Commission Re: Rules, Conditions and Procedures for Application for and Approval of an Offer for Sale of Newly Issued Shares dated 18 May 1992, as amended by the Notification of the Securities and Exchange Commission No. KorChor. 26/2541 Re: Amendment to the Criteria, Conditions and Procedures for Application for and Approval of an Offer for Sale of Newly Issued Shares (No. 4) dated 11 June 1998;

(2) be obliged to comply with Clause 23(1) to (4) of this Notification, *mutatis mutandis*.

Notified this 22nd day of March 2000.

Mr. Tarin Nimmanhaeminda

(Mr. Tarin Nimmanhaeminda)

Minister of Finance

Chairman of the Securities and Exchange Commission

Remarks: ¹⁰Notification of the Securities and Exchange Commission No. KorChor. 27/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares (No. 2) dated 4 August 2000 amends certain provisions of this Notification and prescribes additional provisions as follows:

“Any applicant having filed an application with the Office prior to 30 April 2001 and being unable to comply with the criteria prescribed in the first paragraph of Clause 15(3) as amended by the Notification of the Securities and Exchange Commission No. KorChor. 27/2543 may be granted a waiver by the Office unless such non-compliance falls under the second paragraph of Clause 15(3). The approved person to whom the waiver is granted shall arrange for the articles of association of itself and its subsidiary to comply with the criteria prescribed in the first paragraph of Clauses 15(3) by the subsequent shareholders’ meeting of itself and its subsidiary, as the case may be, and deliver a copy of such articles of association to the Office within seven business days from the registration date of the amendment to the articles of association with the Ministry of Commerce”

¹³Notification of the Securities and Exchange Commission No. KorChor. 35/2544 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares (No.5) dated 19 October 2001 amends certain provisions of this Notification and prescribes additional provisions as follows:

“The following exemptions shall be governed by the provisions under the same subject (if any) of the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares dated 22 March 2000, which has come into force prior to the effective date of this Notification:

(1) The provisions under Clause 7, Clause 7/1, Clause 7/2, and Clause 7/3 of the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares dated 22 March 2000, as amended by this Notification, shall not apply to an offer for sale of newly issued shares to certain investors (private placement) approved by the shareholders’ meetings prior to the effective date of this Notification, provided that such offer shall be completed by 31 December 2001.

(2) The provisions under Clause 17 and Clause 19 of the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares dated 22 March 2000, as amended by this Notification, shall not apply to an application for an offer for sale of newly issued shares to the public which had been filed together with accurate and complete supporting documents with the Office prior to the effective date of this Notification.

(3) The provision under Clause 19 of the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares dated 22 March 2000, as amended by this Notification, shall not apply to an application for an offer for sale of newly issued shares to the public approved by shareholders’ meetings prior to the effective date of this Notification, provided that such application is filed together

with accurate and complete supporting documents with the Office on or after the date on which this Notification becomes effective, but in any case within 30 April 2002.”

The Notification shall become effective as from 22 October 2001.

¹⁵Notification of the Securities and Exchange Commission No. KorChor. 11/2546 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares (No.6) dated 11 July 2001 amends the provisions of this Notification as follows:

“Clause 5 of the Notification of the Securities and Exchange Commission No. KorChor. 18/2544 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares (No. 4) dated 4 July 2001 shall be repealed.”

The Notification shall become effective as from 1 August 2003.

¹⁶Notification of the Securities and Exchange Commission No. KorChor. 27/2546 Re; Application for and Approval of an Offer for Sale of Newly Issued Shares (No.7) dated 27 October 2003 amends the provisions of this Notification as follows:

“An application filed together with accurate and complete supporting documents with the Office prior to the effective date of this Notification shall be subject under the provisions of the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares dated 22 March 2000 which have been in force prior to the amendments being made by this Notification.”

The Notification shall become effective as from 16 November 2003.

²¹Notification of the Securities and Exchange Commission No. KorChor. 15/2548 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares (No.9) amends the provisions of this Notification as follows:

“The provisions under the Notification of the Securities and Exchange Commission No. KorChor. 12/2543 Re: Application for and Approval of an Offer for Sale of Newly Issued Shares, dated 22 March 2000, which have been in force prior to the amendment under this Notification, shall continue to apply as regards the following cases:

(1) The company to which an approval for an offer for sale of newly issued shares is granted by the Office prior to the effective date of this Notification;

(2) The application for an offer for sale of newly issued shares filed with the Office together with accurate and complete supporting documents prior to the effective date of this Notification.”

The Notification shall become effective as from 1 April 2005.