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**Notification of the Securities and Exchange Commission**

**No. KorKhor.1/2553**

**Re: Work System, Contact with Investors and General Business Operation of Trustees**

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By virtue of Section 8, second paragraph of Section 11, Section 37(4), Section 38, Section 57(7), Section 58 and fourth paragraph of Section 59 of the Trust for Transactions in Capital Market Act B.E. 2550 (2007) which contain certain provisions relating to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 32, Section 33, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Securities and Exchange Commission hereby issues the following regulations:

**Chapter 1**

**General Provision**

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**Clause 1** This Notification comprises the minimum provisions for the undertaking of trust business and where there is any provision exclusively applicable to any category of transaction, a trustee is also required to comply with such additional provision in performing as trustee in respect of the category of transaction, such as, the additional provision in respect of real estate investment trust, the additional provision in respect of trust related to issuance of Sukuk, etc.

**Clause 2** This Notification shall not apply to the person approved to perform as trustee exclusively with regard to issuance of Sukuk unless the notification governing the matter thereof stipulates that the trustee shall be subject to this Notification.

**Clause 3** The SEC Office may prescribe any detailed guideline for compliance with this Notification, and any compliance with such guideline shall constitute the compliance with this Notification.

**Chapter 2**

**Rules on Business Undertaking**

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**Clause 4** In order to ensure that a trustee appropriately performs its duties as a professional being entrusted to hold title of and manage the trust property, the trustee shall undertake its business under the following rules:

- (1) To undertake the business with honesty and integrity;
- (2) To undertake the business using knowledge, skills, experiences and prudence as usually required from a person of the same profession;
- (3) To put in place a sound and efficient management and operational oversight under an adequate risk management system;
- (4) To maintain adequate funds for business operation on an ongoing basis;
- (5) To undertake the business in accordance with the professional standards of market conduct;
- (6) To treat each and every investor with fairness and in the best interest of investors;
- (7) To provide information sufficient for decision making by investors whereas such information must be communicated clearly and must not mislead and distort the facts;
- (8) To take actions to ensure fair and appropriate treatment of investors in event of conflicts of interest whether between the trustee and investors or between investors and clients in other field of business of the trustee;
- (9) To employ reasonable prudence to ensure that investors are appropriately advised, or that sound investment decisions have been made for investors;
- (10) To ensure adequate measures to protect assets of the trust property;
- (11) To disclose to the SEC Office without delay the necessary information that may affect instructions or operation of the trustee.

### **Chapter 3**

#### **Work System**

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**Clause 5** In order to ensure a sound and efficient management and operational oversight, the trustee must establish an efficient work system capable of supporting work under its responsibilities in full. In this regard, the work system shall at minimum comprise the following systems:

- (1) Management of trust property:

(a) Segregation of duties and responsibilities within the main working unit in charge of the undertaking of trust business;

(b) Recruitment and maintenance of personnel who are duly qualified for their nature of work;

(c) Measures to prevent access of inside information amongst working units and personnel;

(d) Appropriate oversight, examination and check and balance system in respect of the operation of the main working unit in charge of the undertaking of trust business;

(e) Storage of information, documents and evidence related to the management of trust property.

(2) Safekeeping of assets:

(a) Separation of assets of the trust property from private assets of the trustee;

(b) Safekeeping, verification, care, release and preparation of books of assets of the trust property, as well as monitoring and tracking of benefits arisen from assets of the trust property.

(3) Risk management:

(a) Assessment of risks that arise or may arise from business operation;

(b) Oversight of risk management.

**Clause 6** The work system provided under Clause 5 shall fulfill the following requirements:

(1) The system is capable of supporting the management of each trust property in accordance with its objective of establishment under the trust instrument and in pursuant to the law governing trust for transactions in capital market;

(2) The system is capable of providing adequate protection as generally expected to prevent relevant persons from committing any dishonest act over assets of the trust property, and in case of occurrence of dishonest act, the work system is capable of stopping such act and mitigating, solving and remedying damages incurred by such event;

(3) The system is capable of preventing against any act constituting conflict of interest which is prohibited under the law governing trust for transactions in capital market, as well as preventing persons working in connection with the management of trust from seeking personal gains by employing information obtaining from their performance of duties in relation to the trust property;

(4) The system is capable of clearly and completely identifying each asset in the trust property.

## Chapter 4

### Contact and Solicitation of Investors

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**Clause 7** In order to ensure that a trustee employs appropriate procedures for making contact with and soliciting investors to invest in trust certificate as well as providing information as requested by investors, the trustee shall proceed as follows:

(1) To have persons approved under the notification of the Office of the Securities and Exchange Commission concerning the granting of approval for investor contact and standards of conduct at a number sufficient to perform as investor contact for general investors;

(2) To oversee investor contacts to ensure that they provide appropriate information or advice relating to investment in trust certificate;

(3) To provide investors with adequate and sufficient channels of access to information to support their decision in trading trust certificate.

For consideration under (1), the term ‘general investors’ mean any other investors who are not institutional investors as prescribed under the notification of the Office of the Securities and Exchange Commission concerning the establishment of mutual funds and execution of agreement for management of private funds.

**Clause 8** The proceedings taken under Clause 7 shall cause investors to receive information or advice in the following manners:

(1) Information or advice in relation to the nature, risk and suitability of investment in trust certificate is provided in full and as required;

(2) Information or advice provided is appropriate with the time and status of investors;

(3) Information or advice provided is correct and up-to-date and does not mislead or distort the facts;

(4) Information or advice has been provided on an ongoing basis after investment in trust certificate has been made.

## Chapter 5

### Delegation of Duty

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**Clause 9** In order to ensure that a trustee prudently and carefully selects persons to be delegated of the duties in relation to the management of trust and

that oversight and inspection of performance of such delegated duties of management have been adequate, the trustee shall establish measures in relation to the following matters:

- (1) Selection of appropriate persons for delegation of duty which takes into account the readiness of the work system and of the delegated persons as well as any possible conflict of interest between the delegated persons and the trust property;
- (2) Control and monitoring of performance of the delegated persons;
- (3) Actions to be taken by the trustee in the event that the delegated persons become inappropriate for further delegation of duties.

**Clause 10** In addition to delegation of duties in relation to the management of trust in pursuant to the rules prescribed under Section 37(1) to (3), a trustee may delegate its duty in respect of investment, safekeeping of assets, preparation of registry of trust certificate holders or provision of back-office services to a third party provided that a trust instrument explicitly states that such delegation of duty is allowed.

**Clause 11** The delegation of duties under Clause 10 shall be made by a trustee in compliance with the following rules:

(1) Management in respect of investment in securities or financial instruments shall be delegated to the person capable of undertaking securities business in the category of private fund management or derivatives business in the category of derivatives fund manager, as the case may be. In respect of the management of offshore investment, the delegated person shall obtain a license to undertake such category of business from the securities and exchange regulatory agency which is a member of the International Organization of Securities Commissions (IOSCO);

(2) Safekeeping of assets shall be delegated to the person with the following natures:

- (a) Mutual fund supervisor;
- (b) Private fund custodian;
- (c) Other trustees;
- (d) Legitimate custodian under the law of the country where the trust has made investment or where the custodian is located.

(3) Preparation of registry of trust certificate holders shall be delegated to the person approved to undertake the business of securities registrar.

**Clause 12** The delegation of duties under Clause 9, Clause 10 and Clause 11 shall be made in the manners which ensure the ongoing management of trust property, that no damages are incurred against the trust and the trustee remains liable to damages incurred against the trust property as prescribed by the law governing trust for transactions in capital market.

## Chapter 6

### Preparation of Financial Statements of Trust

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**Clause 13** A trustee shall prepare the financial statements of trust property in accordance with the standards prescribed under Clause 14 except in respect of the trust property in which the trustee's duty is to hold title to the trust property only or for the purpose of debt payment under issuance of securities (passive trust) where the trust instrument explicitly states that no financial statements of the trust property will be prepared.

**Clause 14** Preparation of the financial statements of the trust property by a trustee shall comply with the following rules:

(1) The financial statements must be prepared in accordance with the accounting standards pursuant to the law governing accounting;

(2) In case of the trust property which offers the whole amount of trust certificates to offshore investors, its financial statements must be prepared in accordance with the following accounting standards: International Financial Reporting Standards (IFRS) or Financial Accounting Standards (FAS) or United States Generally Accepted Accounting Principle (US GAAP).

## Chapter 7

### Consequence of Notification Contravention

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**Clause 15** Any contravention of this Notification may result in a trustee being subject to administrative sanctions pursuant to Section 67 in conjunction with Section 70 of the Trust for Transactions in Capital Market Act B.E. 2550 (2007) in accordance with degree of severity of the contravening behavior or the consequence of contravening acts or impacts on the overall credibility of the trust business. Such administrative sanctions comprise:

- (1) Probation;
- (2) Administrative fine;
- (3) Public reprimand;
- (4) Restriction on trust business undertaking;
- (5) Suspension of trust business operation for a specified period in respect of any particular or all trust instruments;
- (6) Revocation of the approval to undertake trust business.

## Chapter 8

### Effective Date of this Notification

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**Clause 16** This Notification shall come into force as from 1 March 2010.

Notified this 4th day of February 2010.

(Vijit Supinit)

Chairman

Securities and Exchange Commission

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**Remark:** The reason for promulgation of this Notification is to prescribe the minimum provisions with regard to the undertaking of trust business to ensure that trustees efficiently serve their clients or investors and can be entrusted and relied upon to manage, administrate and maintain investors' funds, which will enhance the overall confidence of the trust business in the market.