

(UNOFFICIAL TRANSLATION)
Codified up to No.6
As of September 26, 2016

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

**Notification of the Securities and Exchange Commission
No. Kor Jor. 18/2551
Re: Exemption from Filing of the Registration Statement for the
Offer for Sale of Securities**

By virtue of Section 14 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 63 (5) and Section 64 (2) and (3) of the *Securities and Exchange Act B.E. 2535 (1992)* which contains certain provisions relating to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 15 December 2008.

Clause 2 Chapter 1 of the *Notification of the Securities and Exchange Commission No. Kor Jor. 32/2549 Re: Filing and Exemption from Filing of the Registration Statement for the Offer for Sale of Securities* dated 15 November 2006 shall be repealed.

Clause 3 Unless otherwise specified, the definitions in the *Notification of the Securities and Exchange Commission concerning the Definitions under the Notifications relating to Issuance and Offering of Securities* shall apply to this Notification.

Clause 4 The securities offeror shall be exempted from filing the registration statement and the draft prospectus with the SEC Office before making an offer for sale of securities to the public or any persons under this Notification.

The person who is not exempted from filing the registration statement and the draft prospectus under Paragraph 1 shall comply with the *Notification of the Capital Market Supervisory Board concerning Filing of the Registration statement for the Offer for sale of Securities*.

Clause 5 The exemption from filing of the registration statement and the draft prospectus for the offer for sale of warrants shall also include the exemption from filing of the registration statement and the draft prospectus for shares or other securities issued for the exercise of the warrants.

Chapter 1 Securities under Exemption

Clause 6 The provisions under Chapter 3 of the *Securities and Exchange Act B.E. 2535 (1992)* concerning public offering of securities shall not apply to the following securities:

(1) investment units offered for sale by securities holders, provided that such investment units are issued by securities companies licensed to undertake securities business in the category of mutual fund management;

(2) investment unit warrants with either one of the following characteristics:

(a) newly issued and offered for sale together with the newly issued investment units of a securities company licensed to undertake securities business in the category of mutual fund management; or

(b) offered for sale by a securities holder for the first time together with the newly issued investment units of a securities company licensed to undertake securities business in the category of mutual fund management;

(3) securities offered for sale by a securities company licensed to undertake securities business in the category of securities dealing and having previously been offered to the public with either one of the following characteristics:

(a) the securities issuer is a limited company or a public limited company having a duty to prepare and submit financial statements and report on the financial position as well as business operation under the rules specified in the Notification of the Capital Market Supervisory Board issued by virtue of Section 56; or

(b) the securities issuer is a juristic person under specific law which enters into an agreement with the SEC Office to:

1. prepare and submit the financial statements and report on the financial position as well as the business operation under the rules specified in the Notification of the Capital Market Supervisory Board issued by virtue of Section 56;

2. report to the SEC Office without delay any occurrence of the events under Section 57.

Chapter 2 Characteristics of the Offer for Sale of Securities under Exemption

Clause 7 The exemption from filing of the registration statement and draft prospectus with the SEC Office under this Chapter shall be granted under the following conditions:

(1) the securities offeror shall not advertise the offer for sale of securities to the general public;

(2)⁵ in the case where the securities offeror wishes to distribute documents relating to securities to be or being offered for sale, the offeror shall distribute such documents to specific investors only.

⁵ Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2559 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.6)* dated 26 September 2016.

The provision under Paragraph 1 shall not apply to the offer for sale of securities which meet the conditions under Clause 8 and Clause 11(2)(b).

Clause 8 An offer for sale of securities made in the following manners shall be exempt from filing of the registration statement and draft prospectus with the SEC Office:

- (1) being opened for public price bidding;
- (2) having an explicit condition that the person chosen to purchase the securities issued by each company must be a single person or a single group of persons;
- (3) if a single group of persons is chosen, the group shall consist of no more than 10 persons.

Clause 9 An offer for sale of shares made in one of the following manners shall be exempt from filing of the registration statement and draft prospectus with the SEC Office:

- (1) a private placement of shares made to no more than fifty investors within the period of twelve months;
- (2) an offer for sale of shares in an aggregate value of not exceeding twenty million Baht within the period of twelve months, provided that the calculation of the aggregate value of such offered shares shall be based on the offering price of the shares;
- (3) an offer for sale of shares to institutional investors;
- (4) an offer for sale of shares where the seller and the purchaser are shareholders of the company who issues the shares and it is not an offer for sale in general case;
- (5) an offer for sale of newly issued shares to creditors of the company under the business reorganization plan sanctioned by the court pursuant to the law governing bankruptcy provided that the business reorganization plan requires the creditors to accept newly issued shares as repayment of debt;
- (6) an offer for sale of newly issued shares for the exercise of the transferable subscription rights;
- (7)² an offer for sale of newly issued shares by juristic person established by specific law which is made entirely to its shareholders in proportion to their existing shareholding and the shares are fully paid-up.
- (8)⁵ an offer for sale of newly issued shares in general case where it is prescribed that purchasers must be the existing shareholders of the company and have subscribed for shares not exceeding the proportion of their existing shareholding, provided that the offer for sale shall be made based on the decisions agreed in the meeting of shareholders to offer shares to all the existing shareholders equally, but not to those shareholders who may cause duties under foreign law to the company.

Clause 10 An offer for sale of securities to directors or employees made in one of the following manners shall be exempt from filing of the registration statement

² Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2559 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.3)* dated 23 March 2011.

⁵ Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2559 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.6)* dated 26 September 2016.

and draft prospectus with the SEC Office:

(1) an offer for sale to directors or employees under the *Notification of the Capital Market Supervisory Board concerning Offer for Sale of Newly Issued Shares to Directors or Employees*, either made directly or through sub-purchaser;

(2) an offer for sale to directors or employees under the *Notification of the Capital Market Supervisory Board concerning Offer for Sale of Securities by Foreign Company to Directors or Employees of Such Foreign Company or Affiliate in Thailand*.

Clause 11 An offer for sale of securities other than those specified in Clause 9 and Clause 10 made in one of the following manners shall be exempt from filing of the registration statement and draft prospectus with the SEC Office:

(1) an offer for sale of securities to institutional investors;

(2) an offer for sale of securities in any succeeding step made in one of the following manners:

(a) an offer for sale of securities with transfer restriction where the offering is made without breaching of such restriction;

(b) an offer for sale of securities without any transfer restriction and for which the registration statement and draft prospectus have been filed when the securities are offered for sale for the first time and where the securities issuer still has a duty to prepare and submit financial statements and report on the financial position as well as business operation as specified in the Notification of the Capital Market Supervisory Board issued by virtue of Section 56, or where the securities issuer has complied with the agreement made with the SEC Office pursuant to Clause 6 (3) (b) of Chapter 1, *mutatis mutandis*, as the case may be;

(3)¹ *repealed*;

(4) a private placement of warrants for newly issued shares and underlying shares to investors, where the aggregate number of holders of all series of warrants issued by that issuer not exceeding fifty holders at any specific time;

(5) an offer for sale of warrants for newly issued shares and underlying shares to investors in an aggregate value of not exceeding twenty million Baht within the period of twelve months, provided that the calculation of the aggregate value of such offered warrants shall be based on the offering price of the warrants plus the exercise price of such warrants;

(6)⁴ an offer for sale of shares underlying the warrants with the following characteristics:

(a) reserved to accommodate the exercise of warrants which are offered to the existing shareholders in proportion to their shareholding;

(b) the persons who exercise such warrants may not be the shareholders;

(c) the shares underlying the warrants and the warrants shall be issued by listed or public limited company established under Thai laws, which is obliged to

¹ Repealed by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2553 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.2)* dated 1 April 2010.

⁴ Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2553 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.5)* dated 18 September 2013.

the duty under section 56, regardless of whether such duty is resulted from an offer for sale made by public limited company or by its shareholder.

Clause 12 The calculation of the offering value or the counting of the number of investors under Clause 9 and Clause 11 shall be made as follows:

(1) the calculation of the value of an offer for sale of shares under Clause 9(2) shall not include the value of shares offered to institutional investors pursuant to Clause 9(3) and those offered to shareholders under Clause 9(4);

(2) the calculation of the value of an offer for sale of warrants under Clause 11(5) shall not include the value of warrants offered to institutional investors pursuant to Clause 11(1);

(3)¹ the calculation of the number of the shareholders under Clause 9(1) or the holder of securities under Clause 11(4) shall not include the number of securities offered to institutional investors pursuant to Clause 9(3) or Clause 11(1), as the case may be.

The calculation of the offering value or the number of investors under (1), (2) or (3) shall be made regardless of whether any relevant offering is made at the same time or not.

Clause 13 For the purpose of calculating the offering value or counting the number of investors pursuant to Clause 9 and 11, the following conditions shall be complied:

(1) in respect of the offer for sale of securities by an underwriter or selling agent of the securities issuer or the securities holder, all offering made by such underwriter or selling agent shall be deemed as the offering made by the securities issuer or the securities holder, as the case may be, regardless of whether the said underwriter or selling agent purchases the offered securities for its own account prior to the offering or not;

(2) where several securities holders, in conjunction or at about the same time, offer for sale of the same class of securities issued by the same company, all offering by the securities holders shall be deemed as the offering of a single securities holder. The following events shall be considered as the offering in conjunction:

(a) each securities holder makes the offer for sale of the securities at or about the same price and time; and

(b) one of the following facts applies:

1. each securities holder is closely related;
- 2.³ a majority of shareholders are director, executive or major shareholder of issuing company or subsidiary or related person of the aforesaid persons;
3. the proceeds from the offering obtained by each securities holder are eventually received by the same person;
4. the offer for sale of securities where each securities holder uses the same subscription form or the same subscription agent, whereby there is a circumstance indicating that securities subscribers do not pay attention to whichever

¹ Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2553 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.2)* dated 1 April 2010.

³ Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2553 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.4)* dated 21 July 2011.

securities holders from which they subscribe for securities.

(3) where subscribers are securities depository centre, securities custodian, securities broker, securities dealer or any other persons who hold securities on behalf of other persons, the number of investors or class of investors shall be calculated from the number of actual holders of the securities.

Clause 14 In respect of an offer for sale of securities to the public or any person, where the securities holder is, on a necessary and reasonable ground, unable to comply with rules concerning the filing of the registration statement and draft prospectus with the SEC Office and such securities holder holds the offered securities for the purpose of complying with the government policy of assisting financial institutions or maintaining stability of the financial institution system or for the purpose of other similar cases, the securities holder shall be exempt from filing the registration statement and draft prospectus with the SEC Office upon being granted an approval from the SEC Office and upon satisfying the following conditions:

(1) investors to which the offering is made know or should be informed of the information regarding the financial position or business operation of the securities issuer;

(2) information regarding the securities and securities issuer has been sufficiently disclosed.

Clause 15⁵ *Repealed.*

Clause 16 A securities offeror under this Chapter shall report the result of securities sale in compliance with the following rules:

(1) in respect of the offer for sale of securities made in the manners under Clause 8, Clause 9(6), Clause 10 and Clause 11(2) (b) and (6), the securities offeror shall report the result of securities sale in compliance with the rules, conditions and procedures prescribed by the SEC Office by virtue of the provision under Section 81 which applies to the report of sale of securities offering to the public for such class of securities *mutatis mutandis*;

(2) in respect of cases other than (1), the securities offeror shall report the result of securities sale to the SEC Office within fifteen days from the closing date of the offering period by indicating the following details:

(a) date of the offer for sale of securities;

(b) class, nature and specific name of the securities (if any);

(c) number of the securities being offered and number of the securities which have been sold;

(d) offering price, exercise price and exercise ratio (in case of offering of warrants) and where the offered securities or their underlying shares are listed for trading in the Stock Exchange of Thailand, the market price and the date on which the market price is used as reference price and a method of calculation of such market price;

(e) name and address of securities purchasers and number of securities being allotted to each purchaser;

(f) name, contact address and telephone number of the person who reports the result of securities sale.

⁵ Repealed by the *Notification of the Securities and Exchange Commission No. Kor Jor. 7/2559 Re: Exemption from Filing of Registration Statement for the Offer for Sale of Securities (No.6)* dated 26 September 2016.

In respect of reporting the result of securities sale to directors or employees under Clause 10, the closing date of the offering period shall include the following date:

(1) where the exercise of right to purchase securities is allowed during the pre-specified periods, the last date of such periods shall be deemed as the closing date of the offering period;

(2) where the exercise of right to purchase securities is allowed everyday in any calendar year, the last date of such calendar year shall be deemed as the closing date of the offering period.

Clause 17 Securities issuers shall report the result of sale of securities underlying the exercise of warrants offered under an exemption from filing of the registration statement and draft prospectus being granted under this Chapter. Such report shall contain the details as set out under Clause 16 *mutatis mutandis* and be submitted within fifteen days from the expiry date of each exercise period of the warrants.

Where holders may exercise their warrants in a continuous manner from the first date of an exercise period, the issuer of warrants shall submit the report under Paragraph 1 to the SEC Office within fifteen days from the last date of each month in which warrants are exercised.

Clause 18 The exemption from filing of registration statement and draft prospectus prescribed in this Notification shall not apply to an offer for sale of securities for which the offeror has already filed a registration statement and draft prospectus with the SEC Office prior to the date on which this Notification comes into force, except where the offeror has shown his intention in writing to withdraw or cancel the filing of such registration statement or draft prospectus.

Notified this 15th Day of December 2008.

- Signature -
(Mr. Vijit Supinit)
Chairman

Securities and Exchange Commission

Remark: The rationale for issuing this Notification is to specify the rules on the exemption from filing of registration statement and draft prospectus and to additionally specify the rules on the exemption from filing of registration statement and draft prospectus in respect of private placement to specific persons, right offering to existing investors or offering to directors and employees to be in accordance with the relaxation of rules on the offer for sale of securities in this respect which is deemed to be granted an approval from the SEC Office.