

**TRANSLATED VERSION**

As of February 9, 2011

*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 Office of the Securities and Exchange Commission  
No. SorDor. 6/2554  
Re: Additional Provisions relating to Issuance  
and Offer for Sale of Sukuk**

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By virtue of Section 72 and Section 81 of the *Securities and Exchange Act B.E. 2535 (1992)* and Section 9 and Section 15 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 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, and by virtue of Clause 14 and Clause 15 of the *Notification of Securities and Exchange Commission KorDor. 18/2553 Re: Regulations for Becoming Trustee in Sukuk Transaction dated 26 November 2553* and Clause 14, Clause 17, Clause 26(6) and Clause 35 of the *Notification of the Capital Market Supervisory Board TorDor. 2/2554 Re: Provisions on Issuance and Offer for sale of Sukuk and Disclosure of Information dated 10 January 2554*, the SEC Office hereby issues the following regulations:

**Clause 1** This Notification:

(1) contains additional provisions to be used in conjunction with the provisions under the *Notification of the Securities and Exchange Commission concerning Regulations for Becoming Trustee in Sukuk Transaction* and the *Notification of the Capital Market Supervisory Board concerning Provisions on Issuance and Offer for Sale of Sukuk and Disclosure of Information*;

(2) prescribes duties of involved persons whether such duties are before or after the offer for sale of newly issued sukuk;

(3) prescribes particulars in the trust instrument for issuance of sukuk.

**Clause 2** This Notification contains provisions in the following matters:

(1) application for obtaining an approval of the offer for sale of newly issued sukuk and filing of relevant evidentiary documentation or any report under Chapter 1;

(2) qualifications of Shariah advisor under Chapter 2;

(3) particulars and statement in trust instrument relating to issuance of sukuk under Chapter 3;

(4) provisions relating to draft prospectus under Chapter 4;

(5) reporting the result of the sale of sukuk to the public under Chapter 5;

(6) minimum particulars required in sukuk certificate under Chapter 6;

(7) registration of sukuk holder under Chapter 7.

**Chapter 1**  
**Application for Obtaining an Approval of the Offer**  
**for Sale of Newly Issued Sukuk and Filing of**  
**Relevant Evidentiary Documentation**  
**or Any Report**

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**Clause 3** A person who wishes to offer for sale of newly issued sukuk shall submit an application for obtaining an approval together with evidentiary documentation according to the directives and means on the website of the SEC Office and shall pay the application fee on the date of such submitting.

**Clause 4** In case there is an alteration of sukuk trustee after an issuance of sukuk, the asset trustee shall notify such alteration according to the directives and means on the website of the SEC Office.

**Chapter 2**  
**Qualifications of Shariah Advisor**

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**Clause 5** Shariah advisor who provides an opinion on complying with the Islamic principle for the purpose of submitting an application for obtaining an approval of the offer for sale of sukuk shall have the following qualifications:

- (1) being financial institution which has obtained an approval from Bank of Thailand to undertake Islamic financial services or;
- (2) being a natural person having the qualification under Clause 6.

**Clause 6** A natural person who wishes to be Shariah advisor shall have the following qualifications:

- (1) having at least an undergraduate degree in either one of the following areas:
  - (a) Islamic law;
  - (b) Islamic principle;
  - (c) Islamic commercial law and Islamic transactions;
  - (d) Islamic economics and Islamic finance and banking;
- (2) having minimum experience of 3 years in either one of the following areas:
  - (a) providing advices or recommendations relating to Islamic principles;
  - (b) researching and developing [the transaction] relating to Islamic finance and banking;
  - (c) being a lecturer in either one of the areas under sub clause (1) of a well-known and acceptable institution;
  - (3) having proficiency in Arabic language or obtained a degree from university that mainly use Arabic language in its curriculum;
  - (4) not having the following prohibited characteristics:
    - (a) having been ordered by the court as a receivership, being an insolvent, an incompetent or a quasi-incompetent person;

(b) having been sentenced to imprisonment by the court's final judgment as a result of guilty in market abuses of securities or derivatives trading or guilty of deception, fraud or dishonesty, or having been fined for such violations;

(c) having been named in any complaint relating to violation under sub clause (b) by financial regulatory authority, or having subjected to any legal proceeding following the criminal complaint filed by a financial regulatory authority under sub clause (b);

(d) being a former director, manager or authorized management person of a financial institution who involved in the cause of damages or was jointly responsible for the damages to the financial institution of which license was revoked, or business was controlled or suspended by the financial regulatory authority.

For the purpose of considering prohibited characteristics under sub clause (c) and (d), the term "financial institution" means financial institution under the law on interest on loan of financial institution<sup>1</sup>.

### **Chapter 3**

#### **Particulars and Statement in the Trust Instrument Relating to Issuance of Sukuk**

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**Clause 7** A Trust instrument shall at least have the following particulars:

- (1) particulars relating to the establishment of trust and issuance of sukuk:
- (a) name, term, types and objective of a trust. In this regard, such name shall indicate the characteristic of a trust;
  - (b) name, address and telephone number of the originator, a settlor (if any) and asset trustee;
  - (c) date of the establishment of trust for an issuance of sukuk;
  - (d) trust property;
- (2) particulars relating to returns and redemption:
- (a) objective of an issuance of sukuk;
  - (b) important characteristics of sukuk indicating rights, conditions, and rates or proportions of the benefit that sukuk holders will receive;
  - (c) means, period, and place for the payment of sukuk;
  - (d) redemption and return of investment prior to the expiration of sukuk including the case that asset trustee's approval to be trustee has been revoked;
  - (e) any other right of sukuk holders;
  - (f) general meeting of sukuk holders;
- (3) particulars relating to sukuk trustee:
- (a) name, address and telephone number of sukuk trustee;
  - (b) binding agreement to constitute sukuk trustee throughout the maturity of sukuk for protecting beneficial interest of sukuk holders as stated in the trust instrument;
  - (c) duties of sukuk trustee relating to the following matters:
    1. power to act its duties for the benefit of all sukuk holders;

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<sup>1</sup> The law on interest on loan of financial institution means *The Interest on Loan of Financial Institutions Act B.E. 2523 (1980)*.

2. proceeding to force the asset trustee and the originator to perform their obligations pursuant to trust instrument and relevant agreement;
3. claiming for compensatory damages from the asset trustee and the originator in case such persons breach the trust instrument and relevant agreement;
  - (d) becoming the sukuk holder of sukuk trustee and restriction on exercising right as the sukuk holder (if any);
  - (e) a constitution, alterations and removal of sukuk trustee;
  - (f) notifying sukuk holders to acknowledge the changing of sukuk trustee within the specified period as prescribed in the trust instrument;
- (4) particulars relating to the management of a trust:
  - (a) structure, means and transaction (if any) of the trust's investment. In this regard, it shall clearly specify how the trust will use raising money to invest in or seek benefit from the originator and which Islamic principle such investment or seeking benefit are complied with;
  - (b) provision relating to the return of investment and rate or proportion of returns which trust will receive from the originator for the benefit of sukuk holder;
  - (c) rights, duties and relationship of asset trustee, sukuk trustee, the originator and sukuk holder;
  - (d) causes of the amendment of the trust instrument and method for the amendment. In this regard, in case of the amendment by which causes an impact to the beneficial interest of sukuk holders to be less inferior, the consent from the general meeting of sukuk holders is required;
  - (e) rate and means of fee payment or any other expense relating to a trust;
  - (f) delegation of trust management (if any);
  - (g) advanced payment made by asset trustee or sukuk trustee for a trust (if any);
  - (h) preparation for financial statements of a trust;
- (5) particulars relating to an issuance of sukuk certificate and transfer:
  - (a) the way to transfer of sukuk;
  - (b) specimen of sukuk certificate attached to a trust instrument (if any);
- (6) specifying circumstance that causes termination of trust instrument. In this regard, the trust instrument shall specify the process of rescinding trust instrument as well;
- (7) termination of a trust and liquidation.

#### **Chapter 4**

#### **Provisions relating to the Draft Prospectus**

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**Clause 8** The draft prospectus that the offeror will file with the SEC Office shall, *mutatis mutandis*, use the registration statement that an offeror who offers for sale of sukuk has the duty to file with the SEC Office under the *Notification of the Capital Market Supervisory Board Re: Provisions on Issuance and Offer for Sale of Sukuk and Disclosure of Information*.

**Clause 9** Draft prospectus shall be provided with the following statement on the first page.

“The general public is able to request to review or obtain a copy of a registration statement and the draft prospectus of the Capital Market Information Center of the SEC Office<sup>2</sup>, 15<sup>th</sup> floor GPF Witthayu Tower, 93/1 Witthayu road, Lumpini Pathumwan, Bangkok, during the office hours or through <http://www.sec.or.th>”

**Clause 10** In case the *Notification of the Capital Market Supervisory Board Re: Provisions on Issuance and Offer for Sale of Sukuk and Disclosure of Information* requires that the registration statement has to be prepared by an offeror together with a financial advisor, such advisor shall be in the approved list of the SEC Office.

**Clause 11** In case an offeror wishes to provide prospectus in form of compact disc in order to accommodate the demand of an investor to get prospectus in such form, the offeror shall prepare information in compact disc in the same as information [submitted to the SEC Office] under Clause 8, both substance and manner.

An offeror shall deliver a compact disc as prescribed under the first paragraph to the SEC Office prior to or within the effective date of the registration statement and the draft prospectus.

## **Chapter 5**

### **Reporting the Result of Selling Sukuk**

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**Clause 12** In case an offeror has the duty to file the registration statement and the draft prospectus, an offeror shall report the result of selling sukuk to the SEC Office through directives and means on the website of the SEC Office within 15 days from the last date of each month in which sukuk has been offered.

**Clause 13** Under certain circumstances which causes an offeror not to submit a report under Clause 12 to the SEC Office within the specified period of time, such offeror may request for exemption from the submission of such report by proposing a request in writing to the SEC Office prior to such time together with an explanation for requested exemption and specifying new period of time being able to submit the report. In this regard, the SEC Office will grant the exemption when the request is necessary and appropriate.

## **Chapter 6**

### **Minimum Particulars Required in the Sukuk Certificate**

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**Clause 14** Sukuk certificate (if any) shall at least have the following particulars:

- (1) name of the asset trustee, sukuk trustee and the originator;
- (2) the company registration number of the asset trustee and the originator (if any) and the registered date;
- (3) amount of fundraising from the issuance of sukuk;
- (4) name of the sukuk holder or statement which indicates that such sukuk has been issued to the holder;

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<sup>2</sup> The address appeared in the Thai version is not up to date, the current address of the SEC Office has recently moved to 333/3 Vibhavadi-Rangsit Road, Chompon, Chatuchak, Bangkok 10900.

- (5) types, values, serial number (if any), total unit of sukuk and the amount of fundraising, rate or proportion of returns and term of redemption;
- (6) means, date and place for the payment of returns and the redemption;
- (7) rights of sukuk holder in case the originator has an outstanding debt prior to issuing sukuk;
- (8) restriction for the transferring of sukuk (if any);
- (9) signature of an authorized director of the asset trustee and the originator, or of the registrar;
- (10) day, month and year of an sukuk issuance.

**Clause 15** In addition to the specified particulars of sukuk certificate in Clause 14, in case of subordinated sukuk, there shall be particulars as follow:

- (1) statement which indicates that such sukuk is the subordinated sukuk;
- (2) substance of the subordinated sukuk relating to the right of a trust that is entitled to receive the payment after the common creditors of the originator;
- (3) statement which indicates that the sukuk holder has admitted to bound upon the substance of such subordinated sukuk.

## **Chapter 7**

### **Registration of Sukuk Holder**

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**Clause 16** In accordance with Clause 22, an asset trustee shall prepare the register book of each tranch of sukuk with the minimum of the following particulars:

- (1) general information:
  - (a) name of asset trustee, sukuk trustee and the originator;
  - (b) types of sukuk, total unit of sukuk, face value, total face value and day, month and year of an sukuk issuance;
  - (c) rate or proportion of returns, specified date of payment for such return, date of redemption and puttable or callable redemption (if any);
  - (d) restriction for the transferring (if any);
- (2) information of each sukuk holder:
  - (a) name, nationality and address of sukuk holder;
  - (b) serial number of sukuk certificate (if any), amount of unit held and the total value of unit held calculating from face value;
  - (c) day, month and year of the registration or expiration as a sukuk holder;
  - (d) day, month and year of the terminated and replaced sukuk certificate (if any);
  - (e) day, month and year of returning of investment to sukuk holder;
  - (f) the serial number of the requisition for the amendment or registration (if any).

In case of sukuk issued to bearer, the asset trustee shall specify as such in the register book and shall provide particulars as prescribed in sub clause (1) of the first paragraph.

**Clause 17** An asset trustee shall keep the registered book at its headquarter and allow sukuk holders to review such book during the business hours of asset trustee. In this regard, the asset trustee would specify the period for allowing the review, but not be less than 2 hours per day.

**Clause 18** An asset trustee shall prepare a requisition for alterations or registration which at least contains the serial number, day, month and year of the request, type of sukuk, amount of unit held, name of sukuk holder and the objective of the request.

**Clause 19** In case the sukuk certificate got lost or destroyed and the sukuk holder wishes to have a new one, the sukuk holder shall submit a requisition together with evidence of notice to the inquiry officer. When the asset trustee ensures that such evidence is correct, the asset trustee shall issue a new sukuk certificate to the sukuk holder.

**Clause 20** When an asset trustee temporarily ceases the registration, the asset trustee shall notify such cessation at least 7 business days before the first closing date of the registration to the Thai Bond Market Association in case the sukuk is registered with the association.

In case the sukuk is not registered with the Thai Bond Market Association, the asset trustee shall make an announcement of the cessation of registration at the headquarter of the asset trustee in order to acknowledge the sukuk holder 40 days in advance before the first closing day of the registration.

**Clause 21** Unless otherwise specified in Clause 22, the preparation of the registration under this Chapter, an asset trustee may assign the Stock Exchange of Thailand or person who is authorized to provide service as the registrar under the *Securities and Exchange Act B.E. 2535 (1992)* to perform the duty as the sukuk registrar and hold of the register book on behalf of the asset trustee. In this regard, the asset trustee shall notify sukuk holders whose name are in the register book to acknowledge in advance at least 14 days before the assignment. Besides, the asset trustee shall require the assigned sukuk registrar to commit for compliance with the rules [regarding registration] as prescribed in this Notification.

**Clause 22** In case of total amount of sukuk offered for sale to investors in foreign country, an asset trustee shall prepare the registration of the sukuk which is in accordance with the law of such country whereby the asset trustee may assign a person who legally enable to be the securities registrar in such country to provide the sukuk registration.

## **Chapter 8**

### **Effective Date of the Notification**

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**Clause 23** This Notification shall come into force as from 16 February 2011.

Notified this 9<sup>th</sup> day of February 2011.

- Signature -

(Thirachai Phuvanatanarubala)

Secretary-General

The Office of the Securities and Exchange Commission

Note: please note that the contents added in brackets [...] have only been provided in the English version for clearer understanding