

(UNOFFICIAL TRANSLATION)

Codified up to No. 3

As of 6 August 2015

*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. 7/2552  
Re: Rules, Conditions and Procedures for Approval of  
Securitization Projects**

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By virtue of Section 5, Section 10 and Paragraph 2(5) of Section 12 of the *Royal Enactment on Special Purpose Juristic Persons for Securitization B.E. 2540 (1997)*, which contains certain provisions relating to the restriction of rights and liberties of persons, which Section 29 in conjunction with 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:

**Clause 1** In this Notification:

- (1) “**project**” means a securitization project;
- (2) “**originator**” means a person who intends to transfer assets to a securitization project;
- (3) “**financial institution**” means:
  - (a) commercial bank, finance company or credit foncier under the *Financial Institutions Businesses*;
  - (b) financial institution established under specific law which is a financial institution under the *Law Governing Loan Interest of Financial Institutions*;
- (4)<sup>1</sup> *repealed*;
- (5) “**executive**” means a manager or the next four executives succeeding the manager and every person holding an equivalent position to the fourth executive, including persons holding the position of departmental manager or equivalent or higher in accounting or finance;
- (6) “**controlling person**” means a shareholder or any other person who by behavior has influence over policy making, management or operation of the **originator** in a significant manner, whether as a result of being a shareholder or authorized under an agreement or any other matter, especially a person falling under any of the following characteristics:
  - (a) a person who has voting rights, whether directly or indirectly, more than twenty-five percent of the total number of shares with voting rights of the **originator**;
  - (b) a person who, by behavior, can take control over the appointment or removal of a director of the **originator**;
  - (c) a person who, by behavior, can take control over the persons responsible for policy making, management or operation of the **originator** by having them follow his or her orders with regard to the policy making, management or operation of the **originator**;

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<sup>1</sup> Repealed by the *Notification of the Securities and Exchange Commission No. Kor Jor. 4/2554 Re: Rules, Conditions and Procedures for Approval of Securitization Projects (No. 2)* dated 23 March 2011 (effective on 1 April 2011).

(d) a person who, by behavior, takes part in or is responsible for the operation of the **originator** in the same manner as director or **executive**, including any person who holds a position with the same authority as the aforesaid person of the **originator**.

(7) “**servicer**” means a person who provides services of collecting debts or receiving repayments of debts incurred from the receipts of transfer of assets which are rights of claims, and takes any action for the benefits under a securitization project.

**Clause 2<sup>2</sup>** An **originator** filing an application for approval with the SEC Office shall have the following characteristics:

- (1) being a business under Thai law which is:
  - (a) a **financial institution**;
  - (b) a securities company under the *Law on Securities and Exchange*;
  - (c) a juristic person established under specific law;
  - (d) a limited company or public limited company established under Thai law;
- (2) being a business under foreign law which is:
  - (a) an agency or organization operating under a foreign government;
  - (b) a juristic person under foreign law;

The filing of the application for approval of a **project** under Paragraph 1 shall be in accordance with Clause 6, and the application fee shall be paid at the rate specified in the *Notification of the Securities and Exchange Commission concerning Fees related to Applications for Approval of Offering for Sale of Newly Issued Securities and Securitization Projects*.

**Clause 3** A **project** eligible for approval of the SEC Office shall meet the following requirements:

(1)<sup>3</sup> in the case where a special purpose juristic person intends to apply for an approval for an offer for sale of bonds to domestic investors in a general case and the **originator** is a business under Thai law in accordance with Clause 2(1), it shall not appear that any director, **executive** or **controlling person** of the **originator** possesses any untrustworthy characteristic specified in the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives, mutatis mutandis*:

(2) the **project** shall specify the information related to the bond offering plan clearly, including the name and address of the **servicer** and the backup **servicer** (if any):

(3) the asset to be transferred to the special purpose juristic person shall be a right of claim, no matter the type, of the **originator** which will generate the future cash flow or any right that can be demonstrated clearly by the **originator** that it will generate the future cash flow. In this regard, the right of claim or any other right shall be of the same or related type and the **originator** demonstrates that it will not revoke such right or act in any manner that will or may cause subordination of such right;

(4) the direction and methods for investing and seeking benefits from the cash flow

<sup>2</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 4/2554 Re: Rules, Conditions and Procedures for Approval of Securitization Projects (No. 2)* dated 23 March 2011 (effective on 1 April 2011).

<sup>3</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 4/2554 Re: Rules, Conditions and Procedures for Approval of Securitization Projects (No. 2)* dated 23 March 2011 (effective on 1 April 2011).

from the assets shall be specified clearly. In the case where the **project** has a plan to offer bonds for sale in a general case, the investment or the seeking of benefits from the cash flow of such assets shall involve low-risk transactions and has a return payment term before the date of debt repayment for the bonds as specified in the terms and conditions, and shall not cause the cash flow to be insufficient for the full repayment of such debt, including investments in certificates of deposit or promissory notes issued by **financial institutions**, treasury bills, government bonds, and bonds issued by the Bank of Thailand and the Financial Institution Development Fund. In this regard, the SEC Office may specify additional details of the types of instruments and methods for investment;

(5) there shall be details of the allocation of the cash flow generated from receipts of transfer of assets for repayment of the principal and interest to the bondholders of the **project**, including other expenses related to the **project** throughout the **project** term, and the re-transfer of the remaining assets and benefits to the **originator** in full. In any case, there shall be details in accordance with the rules specified by the SEC Office;

<sup>4</sup>*Repealed.*

**Clause 4** In considering whether the application for approval of any **project** meets the requirements under this Notification, the SEC Office shall have the power to proceed as follows:

(1) in the case where the **originator** or the **project** has the characteristics or structure in compliance with the rules or conditions for approval under this Notification but a fact leads the consideration that the true purpose or substance of the **project** constitutes an avoidance of the provisions under the *Law on Special Purpose Juristic Persons for Securitization* or this Notification, in which case the SEC Office may not grant an approval to the **project**. In this regard, the SEC Office shall notify the **originator** of the reasons for such consideration clearly;

(2) in the case where any of the following conditions is met, the SEC Office may not apply the rules under this Notification to the consideration of the application for approval of the **project**, or may not apply the conditions under this Notification to the approved **project** by considering primarily the appropriateness and sufficiency of the information for investment decision making and measures for investor protection. In this regard, the SEC Office may also specify a condition for the **originator** to meet by acting or omitting to act in any manner:

(a) the benefit to be received from compliance with the rules or conditions for obtaining a waiver is not worth the compliance cost of the **originator** and there is a clear fact for considering that such rules or conditions are immaterial for the consideration for approval of the **project** in such case;

(b) the **originator** is subject to limitations under other laws, which causes the inability to comply with the rules or conditions for the waiver;

(c) the **originator** has other sufficient measures that can compensate for the compliance with the rules or conditions for the waiver.

**Clause 5<sup>5</sup>** The SEC Office shall notify the result of the consideration of the application for approval of a **project** within seventy-five days from the date of receiving the application together with accurate and complete evidentiary documentation according to the *Licensing Manual for the Public*.

In the case where the **originator** intends to request a waiver of the rules under

<sup>4</sup> Repealed by the *Notification of the Securities and Exchange Commission No. Kor Jor. 4/2554* Re: *Rules, Conditions and Procedures for Approval of Securitization Projects (No. 2)* dated 23 March 2011 (effective on 1 April 2011).

<sup>5</sup> Amended by the *Notification of the Securities and Exchange Commission No. Kor Jor. 11/2558* Re: *Rules, Conditions and Procedures for Approval of Securitization Projects (No. 3)* dated 6 August 2015 (effective on 1 September 2015).

this Notification, the **originator** shall submit an application for the waiver together with evidentiary documentation to the SEC Office within thirty days from the filing date of the application for approval of the **project** in accordance with the procedures and methods specified in the *Licensing Manual for the Public* unless the SEC Office accepts the request for the waiver after such period lapses on a necessary and reasonable ground. In this regard, the SEC Office shall complete the consideration of the waiver within the same period of the consideration under Paragraph 1.

**Clause 6** The evidentiary documentation to be submitted by the **originator** to the SEC Office under this Notification shall be in accordance with the rules, conditions and procedures as prescribed by the SEC Office.

**Clause 7** This Notification shall come into force from 31 March 2009.

Notified this 13<sup>rd</sup> Day of March 2009.

Signature  
(Mr. Vjijt Supinit)  
Chairman  
Securities and Exchange Commission

Remark: The rationale for issuing this Notification is to specify the qualifications of the originator of a securitization project and the rules for approval of securitization projects. It is therefore appropriate to issue this Notification.