

TRANSLATED VERSION

As of July 25, 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 Capital Market Supervisory Board

No. Tor Jor. 14/2554

**Re: Act or Omission to Act Which is Likely to Affect
Tender Offer of Business**

By virtue of Section 16/6, Section 247 and Section 250/1 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, which contain 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 Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 *The Notification of the Capital Market Supervisory Board No. Tor Jor. 6/2552 Re: Act or Omission to Act Which is Likely to Affect Tender Offer Of Business dated 20 February 2009* shall be repealed.

Clause 2 In this notification:

“*business*” means a company which has any of its securities listed on the *stock exchange*.

“*capital share*” means a new share issued by a *business* regardless of whether it is issued on conversion or not, excluding shares issued for right adjustment to the existing *convertible securities*.

“*convertible securities*” means share warrants, transferable subscription rights or convertible debentures.

“*subsidiary*” means:

(1) a company whose more than 50 percent of the total voting shares is held by a *business*;

(2) a company whose more than 50 percent of the total voting shares is held by a company under (1);

(3) a company whose shares are held in tiers starting from the company under (2) provided that the shareholding at each tier exceeds 50 percent of the total voting shares;

(4) a company whose more than 50 percent of the total voting shares is held by a *business* or company under (1), (2) or (3) collectively;

(5) a company whose power to determine financial and operational policies to obtain benefits from its own activities is controlled by a **business** or company under (1) (2) (3) or (4).

“associated company” means:

- (1) a company whose shares of at least 20 percent but not more than 50 percent of the total voting shares are held by a **business** or **subsidiaries** collectively;
- (2) a company whose power to determine financial and operational policies is shared with a **business** or **subsidiary**, but not to the point of having control over such policies, and which is not considered a **subsidiary** or a joint venture.

“stock exchange” means The Stock Exchange of Thailand (SET).

Clause 3 An act of a **business** in any of the following manners which takes place during the periods specified under Clause 4 and is likely to affect a tender offer shall obtain a prior approval at a shareholders’ meeting unless it is an act in compliance with the rules specified under Clause 5 or with consent or waiver under Clause 6:

- (1) offer for sale of **capital shares** or **convertible securities**;
- (2) acquisition or disposal of material asset for the operation of the **business** including intellectual property or main production machinery which is worth 10 percent or more of the highest value as calculated by each method under the *Notification of the Capital Market Supervisory Board concerning Rules on Entering into Material Transactions Deemed as Acquisition or Disposal of Assets*;
- (3) incurrence of debt or entry into, amendment to or termination of material agreement which is not made in the ordinary course of **business**;
- (4) share buyback (treasury stock) or initiation or support for such buyback by a **subsidiary** or **associated company**; or
- (5) payment of interim dividends which is not in the ordinary course of **business**.

Clause 4 Any of the acts specified in Clause 3 which occurs during any of the periods specified hereunder shall be deemed an act which is likely to affect a tender offer:

- (1) the date on which a public announcement of a **business** takeover is made or the date on which a statement of firm intention to make a tender offer is lodged or the date on which a tender offer commences, whichever comes first;
- (2) the end of the period is any of the following dates, whichever comes last:
 - (a) the date on which a notice of withdrawal from a tender offer is made;

(b) the date on which a notice of cancellation of a tender offer together with the reasons is made to the SEC Office and the SEC Office does not make any objection;

(c) the date following the end of the tender offer period, except in cases where the offeror has acquired more than 50 percent of the company's voting rights, the date of the first general shareholders' meeting held after the completion of the tender offer shall be the end of such period.

Clause 5 In cases where any of the acts specified in Clause 3 is done in accordance with the resolution passed at a general meeting of the shareholders or a meeting of the board of directors of the company, and contains all of the following elements, it shall not be deemed as a frustrating act against the tender offer:

(1) the *stock exchange* is informed of such act before the date on which a public announcement of a *business* takeover is made, or the date on which a statement of firm intention to make a tender offer is lodged, or the date on which a tender offer commences, whichever comes first;

(2) details of such act under Clause 3 are provided in the notice convening a general meeting of the shareholders, or the notice convening a general meeting of the board of directors, as the case may be. In case of *capital shares* or *convertible securities* under Clause 3(1), the resolution of the company's shareholders in a general meeting shall not allow capital increase in the form of general mandate and shall include the following additional information:

(a) the purpose of the capital increase, including the justifying reasons;

(b) the methods of issuance which include right offering, public offering and private placement. In case of private placement for an investor who would be a strategic partner, the name of such investor shall be clearly identified;

(c) the number of shares being tendered;

(3) the offeror shows no sign of takeover intention to a director or the board of directors at the time when the resolution is passed.

For the benefits under (2) of the first paragraph, the term "capital increase in the form of general mandate" shall mean an increase of capital of a listed company by obtaining a prior approval from the shareholders and whereby the board of directors shall determine the objectives, the issuance and the allotment of *capital shares*, e.g., the offer price, the offer timetable, or terms and conditions for each offering as deemed appropriate.

Clause 6 In cases where any act of a *business* as specified in Clause 3 is done with the following consents or waivers, it shall not be subject to an approval from a shareholders' meeting:

(1) a written consent from the tender offeror;

(2) a waiver from the SEC Office before doing such act, in which case the *business* shall be able to prove that there are certain restrictions in holding a shareholders' meeting and that such act does not aim to cause any effect on the tender offer. When appropriate, the SEC Office may propose that the Takeover Panel consider the waiver application.

Clause 7 In cases where a *business* is required to obtain an approval from a shareholders' meeting under Clause 3, the notice of the shareholders' meeting shall clearly disclose information at least in the following matters:

(1) details concerning the tender offer to the extent that they are made known to the board of directors;

(2) in case of an offer for sale of *capital shares* or *convertible securities* under Clause 3(1), the *business* shall provide information concerning the impact of the issuance of *capital shares* or *convertible securities* on the tender offer and the shareholders;

(3) any transaction deemed as acquisition or disposal of asset under Clause 3(2) shall include the opinion expressed by the board of directors in the following matters. In cases where the value of the asset in the acquisition or disposal transaction is 50 percent or more, the *business* shall also disclose an opinion in writing from an independent financial adviser:

(a) fairness of the price and the terms of the transaction;

(b) adequacy of the working capital in cases where the *business* agrees to enter into transaction;

(c) advice to the shareholders whether to vote in favour of or against the transaction together with the reasons thereof.

(4) the opinion of the board of directors with regard to the appropriateness and benefits of entering into transaction under Clause 3 together with the reasons thereof. In cases where the value of the asset in the acquisition or disposal transaction is 50 percent or more, the *business* shall also disclose an opinion in writing from an independent financial adviser.

The independent financial advisers under (3) and (4) of the first paragraph and the disclosure of their opinions shall comply with the regulations specified in the *Notification of the Capital Market Supervisory Board concerning Rules on Entering into Material Transactions Deemed as Acquisition or Disposal of Assets*.

Clause 8 In cases where a *business* does an act as specified in Clause 3 with an approval from the shareholders' meeting, the tender offeror may exercise the right to

cancel the offer or reduce the offer price only where the triggering event has been clearly identified in the tender offer document and approved by the SEC Office.

When the triggering event under the first paragraph occurs, the tender offeror is required to file a prior notice of such event to the SEC Office. If the SEC Office does not make any objection within three business days from the date on which the SEC Office is notified, it shall be deemed that the tender offeror has obtained an approval to exercise the rights under the first paragraph. In cases where the tender offeror, the related party under Section 247 or a person related to such aforesaid persons under Section 258, have voted in favour of the act specified in Clause 3, the tender offeror may not exercise the rights under the first paragraph.

Clause 9 This Notification shall come into force as from 16 August 2011.

Notified this 25nd day of July 2011.

- Signature -

(Thirachai Phuvanatanarubala)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board