

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. 12/2554
Re: Rules, Conditions and Procedures for the Acquisition of
Securities for Business Takeovers

By virtue of Section 16/6 and Section 247 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 248, Section 255 and Section 256 of the *Securities and Exchange Act B.E. 2535 (1992)*, which contains certain provisions related to the restriction of rights and liberty of persons as permitted by 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*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 In this Notification:

“**business**”² means a company whose shares are listed on the **Stock Exchange** with any of the following characteristics:

- (1) being established under Thai law;
- (2) being established under foreign law and having any of the following characteristics:

(a) making an initial public offering to have the offered shares listed on the **Stock Exchange** and not having its shares traded on a foreign exchange, and in case of making initial public offering in many countries, showing the intention to commit primarily to compliance with the rules of the **Stock Exchange** or the SEC Office;

(b) having its shares listed on the **Stock Exchange** and not having its shares traded on a foreign exchange.

“**price**” means consideration for an acquisition of securities, both in the monetary form and non-monetary form;

“**weighted average market price**” means the aggregate of the daily share trading value during a specified period of time divided by the total number of shares traded during the same period;

“**convertible securities**” means warrant, transferable subscription right, convertible debenture, or any other securities that are convertible into shares, which are issued by a **business** in order to grant the right to purchase, or to convert those securities into, shares of such **business**;

“**financial advisor**” means a financial advisor whose name appears on the approved list of the SEC Office;

“**Takeover Panel**” means a subcommittee established under the *Notification of the Capital Market Supervisory Board concerning Appointment and*

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 50/2559 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 3)* dated 16 December 2016 (effective on 16 January 2017).

Power and Responsibilities of the Takeover Panel;

“**Stock Exchange**” means the Stock Exchange of Thailand;

“**electronic data**” means any information that has been created, dispatched, received, stored or processed by electronic means.

Clause 2 Tender offers which are subject to this Notification are:

(1) mandatory tender offer for all securities of a **business** as a result of any person acquiring, or becoming a holder of, shares in the manner prescribed under Chapter 1;

(2) voluntary tender offer for all securities of a **business**;

(3) partial tender offer for securities under Chapter 5;

(4) tender offer for delisting of shares from the **Stock Exchange** under Chapter 6.

Chapter 1

Mandatory Tender Offer and Types of Securities thereunder

Clause 3 Any person who has purchased or taken any other action, which results in his acquisition of shares, or his becoming a holder of shares, of any **business** at the end of any particular day in any manner specified in Clause 4, Clause 5 or Clause 6 shall make a tender offer for all securities of such **business** according to the provisions prescribed herein unless an exemption is granted under Chapter 2.

Clause 4 Any person who has purchased or taken any other action, which results in his acquisition of shares, or his becoming a holder of shares, of any **business** at the end of any particular day reaching or exceeding any trigger point specified below shall make a tender offer for all securities of that **business**:

(1) twenty-five percent of the total voting rights of the **business**;

(2) fifty percent of the total voting rights of the **business**;

(3) seventy-five percent of the total voting rights of the **business**.

In the case where the **business** has repurchased its own shares and the repurchased shares have not been disposed of or cancelled from the paid-up shares of the **business**, the voting rights of those repurchased shares which remained outstanding as of the last day of the month immediately preceding the month in which such acquisition takes place shall be excluded from the calculation of the total voting rights of the **business**.

Clause 5 In the case where the **business** has repurchased its own shares which results in an increase in the shareholding of any person in the **business** reaching or exceeding any trigger point specified in Clause 4, such person shall make a tender offer for all securities of the **business** only if he acquires any additional number of shares in the **business** at any time thereafter when his shareholding in the **business** is in excess of the trigger point and continues to remain so following such acquisition.

Clause 6 Any person who has acquired a significant degree of control of a juristic person with an existing shareholding in the *business* (immediate holding entity), either directly or indirectly through his shareholding in, or control of, other juristic persons (intermediate entities) through the immediate holding entity (chain principle), shall make a tender offer for all securities of the business if:

(1) upon the acquisition of control of such entities, the aggregate holding of shares by such person, each intermediate entity, the immediate holding entity and their related parties specified in Section 258 reaches or exceeds any trigger point specified in Clause 4;

(2) the acquisition of control of the immediate holding entity shall include:

(a) the holding of shares conferring fifty percent or more of the total voting rights in (in case of direct control) the immediate holding entity or (in case of indirect control) any intermediate entity, which is connected in an unbroken chain of control, through to the immediate holding entity; or

(b) the power to control the management or operation of the relevant entity through the nomination of a substantial number of directors on the board of directors of such entity or the business.

For the purpose of Paragraph 1, the total number of shares issued by the *business* and held by such person in Paragraph 1, each intermediate entity (if any), the immediate holding entity, and their related parties specified in Section 258, shall be considered as shares belonging to persons of the same group for so long as such person continues to have control over the immediate holding entity.

Clause 7 An offer shall be made to purchase the following securities where a tender offer for all securities of the *business* is required:

(1) all ordinary and preferred shares issued by the *business* excluding the repurchased shares that have not been disposed of or cancelled from the paid-up shares;

(2) all warrants issued by the *business* in order to grant rights to purchase shares of the *business*, including share warrants and transferable subscription rights, but excluding warrants with any of the following characteristics:

(a) warrants in which the exercise *price* is equal to or higher than the tender offer *price* of the class of shares for which such warrants are exercisable, provided that the offeror has not acquired any such warrants for consideration during the period of ninety days prior to the date on which the tender offer is submitted to the SEC Office;

(b) warrants under which the final exercise period expires on or before the last day of the offer period under the tender offer; or

(c) warrants containing a condition that restricts the right to exercise to certain persons with the result that the offeror would be unable to exercise the warrants.

(3) all convertible debentures issued by the business which may be converted into shares of the business, excluding convertible debentures with any of the following characteristics;

(a) convertible debentures whose conversion *price* when calculated from the conversion ratio thereof is equal to or higher than the tender offer *price* for the class of shares into which those debentures may be converted and the offeror has not acquired any such convertible debentures for consideration during the period of ninety days prior to the date on which the tender offer is submitted to the SEC Office;

(b) convertible debentures in which the last conversion period expires on or before the last day of the offer period under the tender offer; or

(c) convertible debentures with interest and principal payable in foreign currency.

(4) shares that will be acquired upon the exercise of rights under securities which may be converted into shares, provided that the holders of each class of such securities have exercised their purchase or conversion rights before the last day of the offer period under the tender offer.

Chapter 2

Exemptions from Requirement to Make a Tender Offer for All Securities of the Business

Clause 8 Any person who has acquired or become a holder of shares in a business, which results in his shareholding reaching or exceeding any trigger point specified in Clause 4 shall be exempted from the requirement to make a tender offer for all securities of the business if any of the following circumstances apply:

(1) the source of acquisition or nature of the acquirer falls within the scope of the provisions in Clause 9;

(2) the acquirer reduces his shareholding or controlling interest in accordance with the provisions in Clause 10;

(3) a waiver of the requirement to make a tender offer has been granted in accordance with the provisions in Clause 11;

(4) a waiver for an acquisition in relation to the making of a partial tender offer has been granted in accordance with the provisions in Chapter 5.

Clause 9 Where the source of acquisition or the nature of the acquirer of the shares falls within one of the categories specified below, the acquirer shall be exempted from the requirement to make a tender offer for all securities of the business:

(1) acquisition by way of inheritance, or as a result of the exercise of rights to purchase, or conversion rights under *convertible securities*, which in each case are acquired by way of inheritance;

(2) acquisition as a result of the business distributing stock dividends or the exercise of rights under a rights offering, whether or not, for the benefit of those exercising such rights, transferable subscription rights have been issued to the shareholders by the business:

(3) acquisition pursuant to a tender offer for all securities of the business, or the exercise of rights to purchase, or conversion rights under *convertible securities*, which in each case were acquired pursuant to a tender offer for all securities of the business in accordance with this Notification, notwithstanding whether or not such tender offer is made voluntarily or mandatorily in accordance with the requirements prescribed in this Notification;

(4) acquisition by either of the following persons, which are subject to a condition that in normal circumstances they will abstain from exercising their voting rights in a shareholders' meeting of the business:

(a) Thai Trust Fund;

(b) Thai NVDR Company Limited, a subsidiary of the *Stock Exchange*, which is authorized to issue and offer non-voting depository receipts representing certain outstanding financial benefits attached to shares of the business held by it in accordance with the *Notification of the Capital Market Supervisory Board concerning the Offering of Non-voting Depository Receipts*.

(5)³ acquisition as a result of the restructuring of shareholding of the business in any of the following manners:

(a) the acquirer of shares of the business is the person with absolute controlling power over the shares of the business before acquiring such shares;

(b) the acquirer of shares of the business is under absolute control of the absolute controlling person over the shares of the business before acquiring such shares;

For the purpose of Paragraph 1, the term, “*absolute controlling power*” means the power to make decisions or orders regarding the exercising of voting rights in a *business* or any juristic person, either directly or indirectly. In this regard, the power to make decisions or orders indirectly includes the shareholding in a *business* or juristic person under the chain principle at an amount not less than ninety percent of the total voting rights of the juristic person whose shares are held. In case of shareholding through juristic persons in multiple levels, the shareholding in each level shall not be less than ninety percent of the voting rights of the juristic persons whose shares are held.

Clause 10 Any person who has acquired or become a holder of shares in the *business*, which results in his shareholding reaching or exceeding any trigger point specified in Clause 4 shall be exempted from the requirement to make a tender offer for all securities of the *business* if, subsequent to such acquisition, such person reduces his shareholding ratio or controlling interest in any of the following manners:

(1) in case of direct acquisition of shares in the *business*, the acquirer has taken the following actions:

(a) reduction of his shareholding in the *business* below the relevant trigger point specified in Clause 4 by selling his shares in the *business* on the main board of the *Stock Exchange* or transferring those shares back to the person from whom they were transferred within seven business days from the date on which the report of the acquisition of shares in Form 246-2 shall be submitted to the SEC Office; and

(b) abstention from the exercise of voting rights in the *business* in respect of that portion of shares to be reduced under (a) so that the shareholding is below the trigger point.

(2) in case of an acquisition of a significant degree of control of the immediate holding entity (under the chain principle), the acquirer has taken the following actions:

(a) reduction of this shareholding or controlling interest in any of the following manners within seven business days from the date on which the report of the acquisition of shares in Form 246-2 shall be submitted to the SEC Office:

1. reduction of his shareholding in the *business* in accordance with

³ Added by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 38/2561 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 4)* dated 20 April 2018 (effective on 1 May 2018).

the procedures specified in (1)(a);

2. reduction of his shareholding or controlling interest in the immediate holding entity until such holding falls outside the scope of the provisions in Clause 6(2).

In case of a reduction of his shareholding in the immediate holding entity, or in any intermediate entity through the immediate holding entity, the person to whom the shares in such entity are transferred shall not be a related party specified in Section 258 of the acquirer, any intermediate entity, or the immediate holding entity as described in Clause 6(2).

(b) abstention from the exercise of voting rights in the *business* for that portion of shares to be reduced under (a) so that the shareholding is below the relevant trigger point by the acquirer, any intermediate entity, or the immediate holding entity that is related to the acquirer in the manner prescribed under Clause 6(2) and their related parties specified in Section 258.

The acquirer shall disclose details of the reduction of shareholding or controlling interest in the immediate holding entity in the following manners:

(1) clearly indicating in the report of the acquisition of shares in Form 246-2 his intention to reduce the shareholding below the trigger point or to reduce the controlling interest until such holding falls outside the scope of the provisions prescribed in Clause 6(2) and to abstain from the exercise of voting rights in the *business* in respect of that portion of shares to be reduced under (a) so that the shareholding is below the relevant trigger point;

(2) submitting a report giving details of the reduction of his shareholding or controlling interest to the SEC Office by the end of the next business day after the reduction thereof.

Where necessary and appropriate, upon receipt of the request from the acquirer prior to the end of the period specified in (1)(a) or (2)(a), the SEC Office may grant a waiver for the extension of time, or allow the reduction of shareholding to be conducted by other means.

Where a reduction of the shareholding effected by way of transferring those shares back to the person from whom they were transferred results in the shareholding of such person reaching or exceeding the same trigger point that his shareholding stood at prior to the transfer of those shares, such person shall be exempted from the requirement to make a tender offer for all securities of the *business*.

Clause 11 Any person wishing to acquire or become a holder of shares in the *business*, which will result in his shareholding reaching or exceeding any trigger point specified in Clause 4 shall be exempted from the requirement to make a tender offer for all securities of a *business* if such person submits an application for a waiver to the SEC Office or to the *Takeover Panel* through the SEC Office, together with certain fees payable as prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing the Registration Statement, Registrations and Applications*, prior to the purchase or the taking of any action resulting in his acquisition of shares or his becoming a holder of shares in the *business* reaching or exceeding any trigger point, and a waiver is granted by the SEC Office or the *Takeover Panel*, as the case may be. Where appropriate, such waiver may be granted subject to certain conditions that shall be complied with.

The granting of the waiver in the following circumstances is within the discretion of the SEC Office:

- (1) where the acquisition does not result in a change of control of the *business*;
- (2) where the acquisition is made for the purpose of providing support to or rehabilitating the *business*;
- (3) where an acquisition of newly issued securities is made pursuant to the resolution of the shareholders' meeting of the *business* authorizing the issue of such new securities to that person without the requirement to make a tender offer for all securities of the *business* (whitewash) in compliance with the rules prescribed by the SEC Office;
- (4) where there exists any other circumstance pursuant to which a precedent has been set by the *Takeover Panel*;
- (5) where there exists any other reasonable and appropriate ground.

The granting of the waiver in the following circumstances is within the discretion of the *Takeover Panel*:

- (1) where the acquisition of a significant degree of control of the immediate holding entity (under the chain principle) is not made with the main objective of making a business takeover;
- (2) any other circumstance which, in the opinion of the SEC Office, should be considered by the *Takeover Panel*.

A person to whom a waiver has been granted pursuant to Paragraph 1 shall arrange for the acquisition of shares in the *business* during the period of six months from the date of the waiver, after which time such waiver shall lapse.

Clause 11/1⁴ In the case where the person granted a waiver under Clause 11 violates or fails to comply with the conditions for obtaining a waiver specified by the SEC Office or the *Takeover Panel*, as the case may be, if such violation or non-compliance is a significant matter, the SEC Office may propose for the *Takeover Panel* to order such person to make a tender offer for all securities of the *business* in accordance with the rules specified herein. In this regard, the *Takeover Panel* may make an order regarding the offer *price* as well.

For the consideration of the significant matter under Paragraph 1, the following factors shall apply:

- (1) the severity of the impact on the shareholders of the *business*;
- (2) the total voting rights in the *business* of the person who has been granted a waiver, the persons under Section 258 of the person granted a waiver, the concert parties of the person granted a waiver, and the persons under Section 258 of the concert parties;
- (3) the operating plan of the *business* which has been disclosed in the supporting documents of the application for a waiver.

Chapter 3 Public Announcement

⁴ Added by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 40/2561 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 5)* dated 30 May 2018 (effective on 16 June 2018).

Clause 12 Any person making an announcement in any of the following manners that a tender offer for shares of any *business* reaching or exceeding any trigger point will be made by providing details on the name of the offeror and the number of shares or voting rights in respect of shares offered to be purchased, either by specifying the exact number of shares or giving an estimate, shall be deemed to have made a public announcement of a business takeover:

- (1) announce or advertise widely through the press, electronic means or any other telecommunication network;
- (2) notify the directors or managers of the *business*;
- (3) notify one or more shareholders with combined voting rights of ten percent or more of the total voting rights of the *business*;
- (4) notify the *Stock Exchange*;
- (5) notify the SEC Office.

Clause 13 Any person who has made a public announcement of a business takeover shall take the following actions:

(1) submit a statement of intention to make a tender offer in Form 247-3 to the SEC Office within three business days from the public announcement date unless such person has already submitted an offer document in Form 247-4 to the SEC Office within such period;

(2) submit an offer document in Form 247-4 to the SEC Office within seven business days from the date on which a statement of intention to make a tender offer shall be submitted or, where an extension of the time limit has been granted by the SEC Office, within that time limit.

If such person is unable to take any of the actions prescribed in Paragraph 1 and a tender offer for all securities of the *business* pursuant to Clause 3 is not required, such person shall instead submit a statement declining to make a tender offer in Form 247-5 to the SEC Office within the time limit set for each of such actions under Paragraph 1.

A person falling within the scope of this Clause shall also submit a copy of Form 247-3 or Form 247-5 to the *Stock Exchange*.

Clause 14 If a person who has made a public announcement of a business takeover pursuant to Clause 12 has announced that the tender offer is subject to certain pre-conditions, such person shall not be required to comply with Clause 13 until those pre-conditions have been satisfied. In such case, the time period within which Clause 13 shall be complied with shall commence on the business day following the date on which the pre-conditions have been satisfied.

In case of non-satisfaction of the pre-conditions or upon the expiration of one year from the public announcement date of a business takeover, such person shall submit a statement declining to make a tender offer in Form 247-5 to the SEC Office within three business days from the date of non-satisfaction of such pre-conditions or the last day of such one-year period, whichever comes earlier.

Clause 15 A person who has submitted a statement declining to make a tender offer pursuant to Paragraph 2 of Clause 13 or Paragraph 2 of Clause 14 shall be prohibited from making a tender offer for securities, or taking any other action which results in the requirement to make a tender offer for all securities, of that *business* for the period of one year following the date on which the statement declining to make a tender offer has been submitted.

If the person required to submit the statement declining to make a tender offer fails to do so within the time limits specified in Paragraph 2 of Clause 13 or Paragraph 2 of Clause 14, as the case may be, he shall be prohibited from making a tender offer for securities or taking any other action which results in the requirement to make a tender offer for all securities of that *business* for the period of two years from the last day of the period in which the statement declining to make a tender offer is required to be submitted.

Clause 16 In the event that the pre-conditions for tender offer under Paragraph 1 of Clause 14 have not been satisfied due to factors beyond the control of the person who has made a public announcement of a business takeover, the prohibition from making a tender offer for securities under Paragraph 1 of Clause 15 shall not be applicable to such person who has submitted a statement declining to make a tender offer due to the occurrence of such factors within the period specified under Paragraph 2 of Clause 14.

Chapter 4

Making a Tender Offer for Securities of the Business

Division 1

A Tender Offer

Clause 17 Any person who has acquired or become a holder of shares, which results in his shareholding reaching any trigger point shall take the following actions:

(1) in case of an acquisition of newly issued shares resulting in the shareholding reaching any trigger point, submit a report on the total number of shares held in Form 246-2 to the SEC Office by the end of the next business day after the date on which the *business* registers an amendment to its paid-up capital with the Ministry of Commerce, and submit an offer document in Form 247-4 to the SEC Office within seven business days from the date on which the report in Form 246-2 shall be submitted or, where an extension of the time limit has been granted by the SEC Office, within that time limit;

(2) in cases other than (1), submit a report on the total number of shares held in Form 246-2 together with a statement of intention to make a tender offer in Form 247-3 to the SEC Office by the end of the next business day after the acquisition date, and the offer document in Form 247-4 to the SEC Office within seven business days from the date on which the statement of intention to make a tender offer shall be submitted or within the extended time limit that has been granted by the SEC Office.

Clause 18 The offeror shall submit to the SEC Office the offer document in Form 247-4 prepared by a *financial advisor* together with a tender offer acceptance form and pay the fees for the submission of the offer document in compliance with the rules and procedures prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning Determination of Fees on Filing the Registration Statement, Registrations and Applications*. The *financial advisor* acting as the preparer of the offer document may be the offeror, or join in as one of the offerors.

The offer document shall become effective from the business day following the date on which the offer document has been submitted to the SEC Office.

Clause 19 The offer document submitted in accordance with Clause 18 shall contain complete and accurate information without misleading content in any material matter, nor shall it conceal any material information which should be disclosed.

The offer document shall be prepared in Thai, but its supporting documents may be prepared in English.

Clause 20 Upon submission of the offer document to the SEC Office, the offeror shall take the following actions:

(1) deliver the offer document together with a tender offer acceptance form, to the following persons immediately following the submission of the offer document to the SEC Office.

(a) all holders of each class and issue of securities, as shown in the latest register of securities holders, for which an offer is being made;

(b) all securities holders specified in Clause 7(2)(a) to (c) and Clause 7(3)(a) to (c) as shown in the latest register of securities holders (in case of a tender offer for all securities of the *business*);

(c) an offeree business; and

(d) the *Stock Exchange*.

(2) advertise the making of the tender offer in at least two daily Thai language newspapers and one daily English language newspaper as follows:

(a) at least three consecutive business days following the date on which the offer document has been submitted to the SEC Office if the offeror has specified in the offer document from the outset that the offer period and terms of the offer are final;

(b) at least one business day following the date on which the offer document has been submitted to the SEC Office in cases other than (a) where it shall clearly state that the offer period and terms of the offer are not final.

Clause 21 The advertisement of the making of a tender offer pursuant to Clause 20(2) shall be correct and accurate and shall not contain any statement or information which is misleading in any material matter. The essence of the information contained in the advertisement shall be the same as that contained in the offer document which has been submitted to the SEC Office and shall contain at least the following information:

(1) name and address of the offeror;

(2) name of the offeree *business*;

(3) name and address of the preparer of the offer document;

(4) name of the receiving agent;

(5) class or issue of securities for which the offer is being made;

(6) terms of the offer:

(a) number of securities for which the offer is being made and the voting rights thereof;

(b) tender offer *price*;

(c) conditions for the termination of the offer;

(d) purchasing procedures where the number of shares being tendered is in excess of or less than the number of securities for which the offer is being made (in case of a partial tender offer pursuant to Chapter 5); and

(e) period during which any securities holder who has indicated his intention to sell his securities (a tender of securities) pursuant to the offer document (an acceptor) may cancel his intention to sell.

- (7) offer period;
- (8) contact address for submission and receipt of tender offer acceptance forms; and
- (9) a clear statement whether the offer period and the offer terms specified in the offer document as advertised are final.

Clause 22 Prior to the end of the offer period specified in the offer document, if the offeror has disclosed to any individual in particular any material information which has not been disclosed in the offer document, he shall add such information to the offer document that was submitted to the SEC Office by the end of the next business day after the date of the aforementioned disclosure and shall deliver any such additional information to the persons specified in Clause 20(1)(a) to (d) immediately following the submission of the amendment to the offer document to the SEC Office.

Division 2

Offer Period, Offer Terms and Report on the Purchase of Securities

Clause 23 The offeror shall commence the purchase of securities pursuant to the offer document within three business days following the date on which the offer document has been submitted to the SEC Office.

Clause 24 The offeror shall specify the offer period which shall be at least twenty-five consecutive business days but not more than forty-five consecutive business days.

The offeror may extend the offer period provided that he has neither previously stated that he would not extend the offer period nor announced a final offer period. However, the offer period initially specified in the offer document combined with the extended offer period shall not be more than forty-five consecutive business days.

The maximum offer period specified in this Clause shall not apply to a tender offer where the offer terms have been amended due to the occurrence of an event having a material adverse effect on the *business* as prescribed under Clause 29, or where the offer period or the offer terms have been amended in case of a competing offer for the same class of the securities issued by the same *business* pursuant to Clause 30.

Clause 25 An offeror wishing to extend the offer period shall take the following actions:

- (1) submit an announcement of the extension of the offer period in Form 247-6-Gor to the SEC Office prior to the closing date of the previous offer period;
- (2) deliver such announcement to the persons specified in Clause 20(1)(a) to (d) immediately following the submission of such announcement to the SEC Office;
- (3) advertise such announcement in accordance with the procedures prescribed under Clause 20(2) for the period of not less than one business day following the date of submission of such announcement to the SEC Office. It shall be clearly stated in the announcement whether or not such offer period is final.

Clause 26 The offeror may amend the terms of the offer document in any of the following events:

(1) the offeror has not announced his final offer and there would be at least fifteen consecutive business days remaining in the offer period after the announcement of amendment to the offer terms;

(2) where it has occurred an event having a material adverse effect on the *business* as prescribed Clause 45(1) and the provisions prescribed in Clause 29 have been complied with;

(3) where there is a competing offer for the same class of securities issued by the same *business* and the provisions prescribed in Clause 30 have been complied with.

Except the events prescribed under Clause 29, an amendment to the offer terms shall only be made so as to improve the terms thereof and any acceptor who has indicated his intention to sell prior to the announcement of such amendment shall be entitled to the benefit of such improved terms.

The amendment to improve the offer terms in Paragraph 2 shall include:

(1) the increase of the tender offer *price*;

(2) the decrease or cancellation of any condition for the making of the offer;

(3) the extension of any period during which the acceptors may cancel their intention to sell.

Clause 27 In order to amend the terms of the offer document, the offeror shall take the following actions:

(1) submit an announcement of the amendment to the terms of the offer document in Form 247-6-Gor to the SEC Office;

(2) deliver such announcement to the persons specified in Clause 20(1)(a) to (d) immediately following the submission of such announcement to the SEC Office;

(3) advertise such announcement in accordance with the procedures prescribed under Clause 20(2) for the period of not less than one business day following the date of submission of such announcement to the SEC Office. It shall be clearly stated in the announcement whether or not the offer terms are final.

Clause 28 If the offeror has not specified in the offer document from the outset that the offer terms or the offer period specified therein are final and may not be further amended, the offeror shall announce the final offer terms and the final offer period, as the case may be, at least fifteen business days prior to the closing date of the offer period.

In making the announcement of the final offer terms or the final offer period pursuant to Paragraph 1, the offeror shall proceed as follows:

(1) submit an announcement in Form 247-6-Gor to the SEC Office;

(2) deliver such announcement to the persons specified in Clause 20(1)(a) to (d) immediately following the submission of such announcement to the SEC Office;

(3) advertise such announcement in accordance with the procedures prescribed under Clause 20(2) for the period of not less than three consecutive business days following the date of submission of such announcement to the SEC Office. It shall be clearly stated in the announcement that the offer terms or the offer period so announced are final.

Clause 29 Upon the occurrence of any event having a material adverse effect on the *business* as prescribed under Clause 45(1), the offeror may amend the terms of the offer document by reducing the tender offer *price*, notwithstanding whether or not the offeror has announced that the offer terms or offer period are final. The offer document submitted pursuant to this Clause shall be deemed final and the offeror shall announce such final offer in accordance with the procedures prescribed under Paragraph 2 of Clause 28.

The amendment to the offer document pursuant to Paragraph 1 shall be made in accordance with the following provisions:

- (1) there would be at least fifteen business days remaining in the offer period from the date on which the amendment to the offer terms is announced; or
- (2) if there would be less than fifteen business days remaining in the offer period, the offeror shall extend the remaining offer period to be fifteen business days, in which case the said offer period shall be deemed final and the offer shall announce that the offer period so announced is final in accordance with the procedures prescribed under Paragraph 2 of Clause 28.

The offeror may exercise his right to reduce the tender offer *price* pursuant to Paragraph 1 only if he has clearly stated in the offer document the events which may lead to the exercise of such right and, upon the occurrence of such an event, the offeror has notified the SEC Office of such fact accordingly and the SEC Office does not make any objection thereto within three business days from the date on which he SEC Office has been notified.

When the offeror has complied with the procedures and conditions prescribed under this Clause, he may make payment at the reduced *price* to all of the acceptors for the securities they have tendered, except for any securities which are tendered irrevocably, prior to the announcement date of the amendment to the offer terms. Such number of securities shall be paid for at the tender offer *price* previously specified prior to the amendment thereof.

Clause 30 During the offer period, if any person other than those related to the offeror specified in Section 258 has also submitted to the SEC Office an offer document in relation to a tender offer for securities of the same *business* as that for which the offeror is making a tender offer, the offeror may extend the offer period or amend the terms of the original offer, irrespective of whether or not the offeror has already announced that the offer terms or offer period are final.

An amendment to the offer document pursuant to Paragraph 1 shall be made in accordance with the following provisions:

- (1) the offeror shall submit the announcement of the extension of the offer period or the announcement of the amendment to the offer terms within five business days from the date on which such other person has submitted his offer document to the SEC Office or before the end of the final offer period, whichever comes earlier;
- (2) the offeror shall submit the announcement of the final offer period or the final offer terms no later than the last business day on which such other person may announce the final offer period or the final offer terms;
- (3) the extension of the offer period may only be made up to the end of the offer period specified in the offer document of such other person;
- (4) the offeror has clearly stated in the offer document and on each Form 247-6-Gor the events which may lead to the exercise of rights to extend the offer period or amend the offer terms pursuant to this Clause.

In addition to the provision prescribed in Paragraph 2, the offeror shall comply with the provisions prescribed under this Division, *mutatis mutandis*.

Clause 31 The offeror shall allow the acceptors to cancel their tender of securities pursuant to the offer document at any time during the period specified in the offer document, and such period shall not be less than twenty business days during the offer period. The offeror shall include a clear statement to that effect in the offer document.

If there is an extension of the offer period or an amendment to the offer terms, the offeror shall extend the period during which the acceptors may cancel their tender of securities pursuant to the offer document for at least ten business days following the last day of the previous cancellation period or the date on which the offeror has announced the extension of the offer period or the amendment to the offer terms, whichever comes later. Such cancellation period shall not be extended beyond the end of the offer period.

Upon cancellation of the tender of securities by any securities holder during the specified period, the offeror shall return the securities to such securities holder no later than the end of the next business day following the date on which the securities holder announces such cancellation.

Clause 32 The offeror shall engage a receiving agent who shall be responsible for the safekeeping of the securities which acceptors have tendered by maintaining an account for such securities separately from its own asset account and from that of the offeror. The receiving agent shall deliver the securities which the acceptors have tendered to the offeror no later than the end of the next business day following the date on which the offeror has made payment for those securities to the acceptors.

Clause 33 The offeror who has announced the final offer period shall report the preliminary result of the tender offer to the SEC Office in Form 247-6-Khor with a copy thereof to the *Stock Exchange* by the end of the next business day after the last day of the period during which acceptors may cancel their tender of securities, or where the offeror allows acceptors to cancel such tenders throughout the offer period, within three business days prior to the closing date of the offer period.

If subsequent to the submission of the report to the SEC Office pursuant to Paragraph 1, the offer period has been extended due to any circumstance specified in Clause 29 or Clause 30, the offeror shall again comply with the provisions prescribed in Paragraph 1.

Clause 34 The offeror shall report the result of the tender offer to the SEC Office in Form 256-2 with a copy thereof to the *Stock Exchange* within five business days from the closing date of the offer period.

Division 3

Tender Offer Price for Securities

Clause 35 The tender offer *price* for securities shall be determined in accordance with the following provisions:

(1) the tender offer *price* given to all holders of securities of the same class and issue shall be in the same form;

(2) the tender offer *price* may be specified in more than one alternative, provided that at least one of the alternatives shall always be specified in monetary form;

(3) where the tender offer *price* is specified in a form other than monetary form, its monetary value shall have been appraised by a *financial advisor*.

Clause 35/1¹ The determination of the tender offer *price* shall be in accordance with the provisions prescribed in Clause 36, Clause 37, Clause 38, Clause 39 and Clause 40, as the case may be, except in the case where the offeror does not submit the tender offer within the specified period or is granted an extended time period by the SEC Office under Clause 17, in which case the determination of the tender offer *price* shall be in accordance with Clause 40/1 or Clause 40/2.

Clause 36² Unless specified in Clause 37, the tender offer *price* for shares of each class shall not be less than the highest *price* paid for shares of such class which have been acquired by the following persons during the period of ninety days prior to the date on which the offer document is submitted to the SEC Office:

(1) offeror;

(2) persons under Section 258 of the offeror;

(3) concert parties of the offeror;

(4) persons under Section 258 of the persons under (3).

In the case where the persons under Paragraph 1 have acquired either ordinary or preferred shares of only one class during the period of ninety days prior to the date on which the offer document is submitted to the SEC Office, the tender offer *price* for shares of any other class not so acquired shall be determined in accordance with the following provisions:

(1) in case of the class and issue of shares not acquired are listed securities on the *Stock Exchange*, the tender offer *price* shall not be lower than the higher *price* between:

(a) the weighted average *price* of the shares not acquired during the past five business days prior to the date of acquiring shares of another class. In this regard, in case of acquiring shares of another class for several times during a period of ninety days prior to the date of submitting the offer document to the SEC Office, the weighted average *price* during the past five business days prior to the date of acquiring the other class of shares at the highest *price*; and

(b) the fair *price* of the shares not acquired, as appraised by a *financial advisor*.

(2) any case other than (1) shall apply the *price* under (1)(b).

For the purpose of Paragraph 1, the concert party shall mean a person with the intention and behavior or relationship within the scope specified in the *Notification of the Capital Market Supervisory Board Re: Acting in Concert as a Result of the Nature of a Relationship or Behavior and Requirements under Section 246 and*

¹ Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 2)* dated 13 September 2011 (effective on 16 September 2011).

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 50/2559 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 3)* dated 16 December 2016 (effective on 16 January 2017).

Section 247.

Clause 37² In case of a tender offer as a result of a business takeover under the chain principle under Clause 6, the tender offer *price* shall be in compliance with the following provisions:

(1) if the person under Paragraph 1 of Clause 36 does not acquire shares of the *business* during a period of ninety days prior to the date of submitting the tender offer to the SEC Office, the tender offer *price* shall not be lower than the acquisition cost of the controlling interest of the *business* under the chain principle. In this regard, the SEC Office shall have the power to issue rules for calculating the acquisition cost of the controlling interest in such manner;

(2) if the person under Clause 36 has acquired ordinary or preferred shares of the *business* during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office:

(a) the tender offer *price* for shares of the class so acquired shall not be less than the higher of:

1. the acquisition cost of the controlling interest over such *business* under the chain principle in accordance with the calculation methods prescribed by the SEC Office pursuant to (1); and

2. the highest *price* paid for shares of such class which have been acquired by the persons under Clause 36 during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office.

(b) the tender offer *price* of the class of shares not acquired shall comply with the provisions prescribed in Paragraph 2 of Clause 36, *mutatis mutandis*.

Clause 38 If the shares which have been acquired during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office are shares acquired as a result of the exercise of purchase or conversion rights, the highest acquisition *price* of such shares shall be calculated as follows:

(1) in case of an acquisition made as a result of the exercise of rights under share warrants, derivative warrants, or other securities of a similar nature which have been acquired during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office, the highest acquisition *price* of such shares shall be the higher of:

(a) the acquisition *price* of the securities from which the exercise of rights to purchase are derived, together with the exercise *price* under such securities; and

(b) either one of the following *prices*:

(i) the *weighted average market price* of such shares during the five business days immediately prior to the exercise date of such securities, if shares in the same class as those acquired as a result of the exercise of such rights are listed on the *Stock Exchange*; or

(ii) in cases other than (i), the fair value of such shares as appraised by a *financial advisor*.

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 50/2559 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 3)* dated 16 December 2016 (effective on 16 January 2017).

(2) in case of an acquisition made as a result of the conversion of convertible debentures or other securities of a similar nature which have been acquired during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office, the highest acquisition *price* of such shares shall be the higher of:

(a) the acquisition *price* of the securities from which conversion rights are derived; and

(b) the *price* specified in (1)(b), *mutatis mutandis*.

(3) if there is no acquisition of securities from which the exercise of purchase and conversion rights are derived during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office, the highest acquisition *price* of such shares shall be the *price* determined pursuant to (1)(b), *mutatis mutandis*.

Clause 39 If the shares which have been acquired during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office are shares acquired by way of a share swap for shares of another company, the highest acquisition *price* of such shares shall be the ratio of the number of shares of such other company to the number of shares of the *business* used for the purpose of the share swap multiplied by the following *prices*:

(1) the *weighted average market price* of the shares of such other company during the five business days immediately prior to the date on which the shares of the *business* are acquired, if the shares of such other company are listed on the *Stock Exchange*;

(2) the fair value of the shares of such other company as appraised by a *financial advisor*, where the shares of such other company are not listed on the *Stock Exchange*, or are listed securities but have not been traded during the five business days immediately prior to the date on which the shares or the *business* have been acquired.

Clause 40 In the calculation of the highest *price* of shares acquired during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office, the offeror may adjust the *price* of shares so acquired by taking into consideration the impact of the following events, provided that the offeror shall specify details of the adjustment of the acquisition *price* in Form 247-4:

(1) a payment of dividend to shareholders;

(2) any change in the par value of the shares which results in an increase or decrease in the number of shares;

(3) any grant or issue of rights or transferable subscription rights for a capital increase to the existing shareholders in proportion to the existing number of shares held by them.

Where any provision prescribed hereunder requires that the offeror shall include the acquisition *price* of the securities from which the exercise of purchase or conversion rights are derived in the calculation of the acquisition *price* of shares of the *business*, the offeror may adjust the acquisition *price* of such other securities by taking into consideration the exercise ratio or conversion ratio for shares per one unit of such securities.

Clause 40/1¹ If the offeror submits the offer document after the specified period or the extended time period granted by the SEC Office under Clause 17, the tender offer *price* of ordinary or preferred shares shall not be less than the higher of:

(1) the *weighted average market price* of shares of such category during the five business days immediately prior to the date on which the offeror submits the offer document;

(2) the regular tender offer *price* plus extra money derived from the delayed submission of the offer document:

(a) if the offer document is submitted within the specified period or the extended time period granted by the SEC Office under Clause 17, the regular tender offer *price* pursuant to such class of shares shall be used, provided that the tender offer *price* shall be based on the calculation methods under Clause 36, Clause 37, Clause 38 or Clause 39, as the case may be;

(b) the extra money derived from the delayed submission shall be calculated as follows:

$$\frac{\text{regular tender offer price} \times \text{MLR interest rate} \times \text{duration without the offer document}}{365}$$

For the purpose of Paragraph 1(2)(b):

“*MLR interest rate*” means an average rate of term-loan interest rate collected from the prime large customers by the big four commercial banks (Minimum Loan Rate);

“*duration without the offer document*” means the duration immediately after the specified period for the submission of the offer document or the extended time period granted by the SEC Office under Clause 17 up until the date on which the offer document is submitted under this Clause;

The reasons for share *price* adjustment under Clause 40 shall be applicable to share *price* adjustment in Paragraph 1, *mutatis mutandis*. In this respect, the offeror shall also provide details of such adjustment in Form 247-4.

Clause 40/2¹ If the tender offer *price* calculated under Clause 40/1 is proved to be unfair to an offeror, the offeror may apply for the approval of the **Takeover Panel** for the consideration of a waiver of tender offer *price*. In this regard, the **Takeover Panel** shall consider the fair and suitable tender offer *price* for the offeror and shareholders.

The provisions prescribed in Paragraph 2 of Clause 44 shall be applicable to the submission of an application for approval to the **Takeover Panel** for the consideration of a waiver of tender offer *price* under Paragraph 1.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 2)* dated 13 September 2011 (effective on 16 September 2011).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 2)* dated 13 September 2011 (effective on 16 September 2011).

Clause 41 The tender offer *price* for share warrants and transferable subscription rights shall not be less than the higher of:

(1) the highest *price* paid for the acquisition of such issue of warrants during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office; and

(2) the difference between the tender offer *price* for shares in the same class as those reserved for such warrants and the exercise *price* of such warrants, multiplied by the number of shares that would be obtained on the exercise of one unit of such warrants.

¹If the offeror submits the offer document after the specified period or the extended time period granted by the SEC Office under Clause 17, the tender offer *price* under Clause 40/1 or the *price* granted a waiver under Clause 40/2 shall be used for the calculation under Paragraph 1(2).

Clause 42 The tender offer *price* for convertible debentures shall not be less than the higher of:

(1) the highest *price* paid for the acquisition of such issue of convertible debentures during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office; and

(2) the tender offer *price* for shares in the same class as those reserved for such convertible debentures, multiplied by the number of shares convertible per one unit of the convertible debentures.

¹If the offeror submits the offer document after the specified period or the extended time period granted by the SEC Office under Clause 17, the tender offer *price* under Clause 40/1 or the *price* granted a waiver under Clause 40/2 shall be used for the calculation under Paragraph 1(2).

Clause 43 if the offeror makes a tender offer *price* adjustment by increasing the tender offer *price* for shares, the offeror shall also adjust the tender offer *price* for *convertible securities* in accordance with Clause 41 and Clause 42 if the shares reserved for the exercise of rights under such *convertible securities* are shares in the same class as those subject to such tender offer *price* adjustment.

Clause 44 In the following circumstances, upon receipt of an application from the offeror, the *Takeover Panel* may grant a waiver allowing the offeror to set a tender offer *price* for securities otherwise instead of in accordance with the provisions specified herein:

(1) where the offeror is able to demonstrate that the *price* derived from a calculation under the procedures prescribed herein does not truly reflect the actual value of such securities;

(2) where the offeror has acquired shares of the *business* by any means other than those for which the *price* calculation methods have been prescribed herein during a period of ninety days prior to the date on which the offer document is submitted

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 2)* dated 13 September 2011 (effective on 16 September 2011).

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 31/2554 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 2)* dated 13 September 2011 (effective on 16 September 2011)

to the SEC Office.

The offeror shall apply for a waiver under Paragraph 1 through the SEC Office and pay the fees as specified in the *Notification of the Office of the Securities and Exchange Commission concerning Determination of Fees for Filing of the Registration Statement, Registrations and Applications*. In this regard, the offeror shall engage a **financial advisor** to render its opinion on the tender offer *price* proposed by the offeror for further consideration by the **Takeover Panel**.

Division 4 **Cancellation of a Tender Offer**

Clause 45 The offeror may cancel the tender offer pursuant to any of the following events:

(1) an occurrence of any event or action after the offer document has been submitted to the SEC Office but during the offer period which causes or may cause serious damage to the status or assets of the offeree business, and such events or actions do not result from the acts of the offeror, or any act for which the offeror is responsible, or

(2) the taking of any action by the offeree business after the offer document has been submitted to the SEC Office but during the offer period which results in a significant decrease in the share value.

A cancellation of the tender offer pursuant to Paragraph 1 may only be made if the offeror has clearly stated such events in the offer document and upon an occurrence thereof, and the offeror has notified the SEC Office of such fact accordingly and the SEC Office does not make any objection thereto within three business days from the date on which the SEC Office has been notified.

Clause 46 In addition to the events giving rise to a cancellation of the tender offer in accordance with Clause 45, the voluntary tender offeror may cancel his tender offer, if upon the closing date of the offer period specified in the offer document, the number of shares tendered is less than the number of shares specified as a condition of the offer. To this effect, the offeror shall clearly specify the conditions and the cancellation events under this Clause in the offer document.

Clause 47 In a cancellation of the tender offer, the offeror shall proceed as follows:

(1) deliver a tender offer cancellation notice together with the reason for the cancellation to the following persons:

(a) in case of a cancellation pursuant to Clause 45, the **Stock Exchange**, the offeree business and all holders of securities of the class or issue from which the offer is being made whose names are listed in the latest register of securities holders, by the end of the next business day after the last business day on which the SEC Office may object to the cancellation;

(b) in case of a cancellation pursuant to Clause 46, the SEC Office and those persons under (a), by the end of the next business day after the closing date of the offer period.

(2) the receiving agent shall return securities to the acceptors whose securities have not yet been paid for by the end of the next business day after the date on which the cancellation notice is delivered to such persons.

Division 5

Requirements Following the Making of a Tender Offer

Clause 48 After the tender offer has been made, the offeror who has acquired or become the holder of shares in the *business*, which results in his shareholding reaching or exceeding any trigger point specified in Clause 4, shall not, regardless of whether such person acquires any securities from the tender offer, take the following actions:

(1) for the period of six months from the closing date of the offer period, purchase or otherwise taking any other action, which results in his acquisition of or his becoming holder of securities of such *business* at a *price* or consideration which is higher than the *price* or consideration specified in the offer document, unless it is an acquisition of newly issued securities or it is an acquisition from making a tender offer which was permitted to be made in accordance with Section 255 of the *Securities and Exchange Act B.E. 2535 (1992)*;

(2) for the period of one year from the closing date of the offer period, take any action which are of a material nature different from those specified in the offer document, unless a shareholders' meeting of the *business* otherwise adopts a resolution with a vote of not less than three-fourths of the total votes of the attending shareholders with the voting rights, and the SEC Office has been notified accordingly.

Chapter 5

Partial Tender Offer

Clause 49 A partial tender offer which results in any person acquiring or becoming a holder of shares of any *business*, which results in his shareholding reaching any trigger point at which a tender offer shall be made, but in respect of which the requirement to make a tender offer for all securities of the *business* at a later stage is exempted, shall be subject to the provisions prescribed in this Chapter and Chapter 4, *mutatis mutandis*, insofar as they are not in conflict with this Chapter.

Clause 50 Any person wishing to apply for a waiver in relation to the making of a partial tender offer without having to make a tender offer for all securities of the *business* at a later state shall submit an application for such waiver to the SEC Office and pay the fees as prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning Determination of Fees on Filing the Registration Statement, Registrations and Applications*.

The application for a waiver in relation to the making of a partial tender offer may be approved by the SEC Office only if the applicant can demonstrate and warrant to the SEC Office that:

(1) the aggregation of the shares listed below shall not result in the applicant becoming or being capable of becoming a shareholder with voting rights of fifty percent or more of the total voting rights of the *business*:

(a) all classes of shares originally held by the applicant and any related party specified in Section 258 prior to the submission of an application for a waiver;

(b) shares to be acquired as a result of the exercise of purchase or conversion rights under any *convertible securities* which are originally held by the applicant and any related party specified in Section 258 prior to the submission of the application for a waiver;

(c) shares intended to be acquired by the applicant by way of a partial tender offer.

(2) a resolution at a shareholders' meeting of the *business* has been adopted to allow the applicant to make a partial tender offer for shares of the *business* by a vote of not less than one half of the total votes of the attending shareholders with voting rights, provided that a notice of the shareholders' meeting shall clearly specify the following information:

(a) details of the person wishing to acquire the shares, including the number of shares held by, and the voting rights of, such person and any related party specified in Section 258 both before and after the making of a partial tender offer;

(b) details of the shares which are intended to be offered for:

(c) objectives of an increase of the shareholding interest in the *business* and an impact on the *business* and shareholders.

(3) the applicant and any related party specified in Section 258 have not exercised their voting rights in such resolution;

(4) during a period of six months prior to the date on which the offer document is submitted to the SEC Office, the applicant and any related party specified in Section 258 have acquired, or will acquire, shares of the same class of those for which a waiver is applied in the number not exceeding the followings:

(a) the aggregate number of shares acquired from any one particular person, whether at once or several times, not exceeding five percent of the number of shares which are intended to be offered pursuant to a partial tender offer; and

(b) the aggregate voting rights in respect of shares and shares to be acquired as a result of the exercise of purchase or conversion rights under any *convertible securities* acquired during such period not exceeding twenty percent of the total voting rights in respect of shares which are intended to be offered pursuant to a partial tender offer.

The number of shares acquired pursuant to the exemptions specified in Clause 9 shall not be counted towards the number of shares specified in Paragraph 1.

Clause 51 The person to whom a waiver has been granted in relation to the making of a partial tender offer shall comply with the following conditions:

(1) the number of shares which are being offered shall not be less than ten percent of the total number of the shares issued in that class after excluding the repurchased shares which remained outstanding as of the last day of the month immediately preceding the month in which the offer document has been submitted to the SEC Office;

(2) where the person to which a waiver has been granted, or any related party specified in Section 258, has acquired any class of shares during a period of six months prior to the date on which the offer document is submitted to the SEC Office, such person shall also offer to purchase such class of shares in the a partial tender offer;

(3) in submitting the offer document to the SEC Office, the person to whom a waiver has been granted shall submit a letter demonstrating sources, number and voting rights in respect of shares and shares to be acquired as a result of the exercise of purchase or conversion rights under any *convertible securities* which have been acquired by such person and any related party specified in Section 258 during a period of six months prior to the date on which the offer document is submitted to the SEC Office.

If it appears to the SEC Office that the person to whom a waiver has been granted has failed to comply with the provisions prescribed in this Chapter, such waiver shall be revoked.

Clause 52 The offeror shall not purchase shares in excess of a maximum number of shares specified in the offer document notwithstanding that shares in the same class as those which are being offered have been tendered by the acceptors in excess of such maximum number, the offeror shall clearly specify such limitation in the offer document.

If the number of shares in the same class as those which are being offered for have been tendered by the acceptors in excess of the maximum number of shares which are being offered, the offeror shall purchase from all these acceptors the number of shares of each class tendered for sale by them on a pro rate basis. Subject to the provision prescribed under Paragraph 1, the offeror may, following such pro rating allocation, adjust the number of shares to be purchased from each acceptor in such manner as to ensure that they are not left with any odd lot number of shares unable to be sold to the offeror. In this regard, securities of the parties related to the offeror specified in Section 258 shall not be purchased pursuant to a partial tender offer.

Clause 53 An offeror to which a waiver in relation to the making of a partial tender offer for shares of a *business* has been granted under this Chapter shall be prohibited from purchasing or otherwise taking any other action which results in his acquisition of additional shares of such *business* during the period of six months from the end of the offer period, unless it falls within one of the followings:

- (1) an acquisition in respect of which any of the exemptions from the requirement to make a tender offer pursuant to Clause 9 applies;
- (2) an acquisition of newly issued shares;
- (3) an acquisition in any other manner which is deemed by the SEC Office to be necessary and appropriate, and not contrary to the spirits of the provisions prescribed under this Chapter.

Chapter 6

Tender Offer for Delisting of Securities

Clause 54 A tender offer for securities pursuant to the regulations of the *Stock Exchange* regarding the delisting of securities from the *Stock Exchange* shall be made in accordance with the provisions prescribed under this Chapter and Chapter 4,

mutatis mutandis, insofar as they are not in conflict with this Chapter.

Clause 55 The offeror under this Chapter shall specify at least one alternative of the tender offer *price* in monetary form, except where the tender offer is made for the purpose of restructuring the shareholding of a listed company under the *Notification of the Securities and Exchange Commission Re: Rules on Offer for Sale of Newly Issued Securities in concurrent with Tender Offer for Existing Securities of a Listed Company for the Purpose of Restructuring of Shareholding and Management*.

Clause 56 The tender offer *price* in respect of the tender offer made pursuant to this Chapter shall not be less than the maximum *price* calculated in accordance with the following procedures:

(1) the highest *price* paid for such ordinary or preferred shares which have been acquired by the offeror, or any related party specified in Section 258, during a period of ninety days prior to the date on which the offer document is submitted to the SEC Office.

(2) the *weighted average market price* of such shares during the period of five business days prior to the date on which the board of directors of the *business* resolves to propose for consideration by the shareholders' meeting the delisting of shares or the date on which the shareholders' meeting resolves to delist the shares from the *Stock Exchange*, whichever comes earlier;

(3) the net asset value of the *business* calculated based on the book value which has been adjusted to reflect the latest market value of the assets and liabilities of such *business*; and

(4)² the fair value of the ordinary shares or the preferred shares of the *business* as appraised by an independent *financial advisor*.

Clause 57 The offeror under this Chapter who wishes to reduce the tender offer *price* due to the occurrence of any event having a material adverse effect on the *business* as prescribed under Clause 45(1) shall apply for approval of the *Takeover Panel* through the SEC Office. A reduction of the tender offer *price* can only be made upon the receipt of an approval from the *Takeover Panel*. In this regard, the offeror shall engage a *financial advisor* to render its opinion on such new tender offer *price* for further consideration by the *Takeover Panel*.

Clause 58 The offeror under this Chapter may cancel his tender offer in any of the following events:

(1) an occurrence of any event or action after the offer document has been submitted to the SEC Office but within the offer period which causes or may cause serious damage to the status or assets of the offeree business, and such events or actions do not result from the acts of the offeror, or any act for which the offeror is responsible;

(2) an occurrence of any other event resulting in the cessation of the delisting of the shares from the *Stock Exchange*.

A cancellation of the tender offer pursuant to Paragraph 1 may only be

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 50/2559 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 3)* dated 16 December 2016 (effective on 16 January 2017).

made if the offeror has clearly stated such event in the offer document and, upon the occurrence thereof, the offeror has notified the SEC Office of such fact accordingly and the SEC Office does not make any objection thereto within three business days from the date on which the SEC Office has been so notified.

Chapter 7 Others

Clause 59 The offeror may make another tender offer within one year following the closing date of the offer period specified in the previous tender offer where such subsequent tender offer is made in compliance with the regulations of the *Stock Exchange* regarding the delisting of securities from the *Stock Exchange*, provided that the offeror has clearly stated his intention to delist the shares from the *Stock Exchange* in the offer document of the previous tender offer.

Clause 60 If the offer document contains any information which is not in accordance with that specified in Clause 19, the offeror and the preparer of the offer document shall amend or add the information so that it complies with Clause 19. The SEC Office may request that the offeror disseminates the amended or additional information to the relevant persons within such time and by such means as specified by the SEC Office. If appropriate, the SEC Office may also require the offeror to extend the offer period or the period during which the acceptors may cancel their intentions to sell.

Clause 61⁴ The *Takeover Panel* shall have the power to take the following actions by taking into foremost consideration the appropriateness and measures for protecting the securities holders of the *business*:

(1) granting a waiver of any or many provisions prescribed in this Notification to any tender offer if there is a ground to view that such tender offer has one or many characteristics as follows:

(a) such provisions shall cause unfair or unequal treatment toward the holders of securities of the *business*;

(b) such provisions governing the tender offer may cause excessive burdens on the offeror compared to the protection the holders of securities of the *business* will receive from the compliance with such provisions;

(c) there is a clear fact that causes the consideration that the provisions, if inapplicable, are immaterial and the offeror has arranged for other sufficient measures to be used instead.

The *Takeover Panel* may prescribe conditions for the offeror who is granted a waiver under Paragraph 1 to comply with as well.

(2) ordering a temporary suspension of the tender offer period specified in the offer document.

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 40/2561 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers (No. 5)* dated 30 May 2018 (effective on 16 June 2018).

Clause 62 The Forms to be submitted to the SEC Office under this Notification shall be in the formats and contain the details as specified by the SEC Office.

Clause 63 Any person who has submitted to the SEC Office the following reports or information in the form of documentation or publication shall also submit the same to the SEC Office in electronic form via the electronic information transmission system in accordance with the procedures specified on the website of the SEC Office:

(1) an announcement of a statement of the intention to make a tender offer in Form 247-3;

(2) a submission of the offer document in Form 247-4;

(3) an announcement of a statement declining to make a tender offer in Form 247-5;

(4) an announcement of the extension of the offer period, an announcement of the amendment to the terms contained in the offer document, announcement that the offer terms or offer period are final in Form 247-6-Gor;

(5) a report on the preliminary result of the tender offer in Form 247-6-Khor;

(6) a report on the result of the tender offer to the SEC Office in Form 256-2;

(7) a tender offer cancellation notice pursuant to Clause 47(1).

Any report or information submitted to the SEC Office both in the physical form of documentation and by electronic means shall contain the same content and shall not contain any statement which is false in any material respect, nor shall it conceal any material information which should be disclosed.

Chapter 8

Transitional Provisions and Effective Date

Clause 64 Any notifications of the Office of the Securities and Exchange Commission, orders and circulars issued or prescribing guidelines for compliance with the *Notification of the Securities and Exchange Commission No. Kor Kor. 4/2538 Re: Rules, Conditions and Procedures for Acquisition of Securities for Business Takeovers* dated 6 March 1995, and the *Notification of the Securities and Exchange Commission No. Kor Jor. 53/2545 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers* dated 18 November 2002, which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with or contrary to this Notification until other notifications, orders or circulars issued or prescribing guidelines for compliance with this Notification come into force.

Clause 65 Any references made in other notifications to the *Notification of the Securities and Exchange Commission No. Kor Kor. 4/2538 Re: Rules, Conditions and Procedures for Acquisition of Securities for Business Takeovers* date 6 March 1995 and the *Notification of the Securities and Exchange Commission No. Kor Jor. 53/2545 Re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers* date 18 November 2002 shall mean reference to his Notification.

Clause 66 This Notification shall come into force from 1 June 2011.

Notified this 13th day of May 2011.

(Mr. Thirachai Phuvanatanarubala)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board