

TRANSLATED VERSION

As of June 5, 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 Capital Market Supervisory Board

No. TorJor. 16/2552

**Re: Rules, Conditions, and Procedures for Application for
and Approval of Offer for Sale of Newly Issued Bonds
to Investors in Foreign Countries**

By virtue of Section 14 of the *Securities and Exchange Act B.E. 2535 (1992)* as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 35 and Section 41(3) of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions in relation to the restriction of rights and liberties of persons, which Section 29 in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission acting as the Capital Market Supervisory Board under Section 60 of the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 31 March 2009.

Clause 2 In this Notification:

(1) “*bond*” means a *secured bond*, an *unsecured bond*, a *convertible bond*, a *structured note* or a *subordinated bond*, whether or not the issuer provides a bond holder representative;

(2) “*secured bond*” means a bond in which the issuer provides a collateral for debt repayment by means of mortgage, pledge, guarantor or any other collateral;

(3) “**unsecured bond**” means a bond in which the issuer does not provide a collateral for debt repayment, whether or not the issuer provides a bond holder representative;

(4) “**convertible bond**” means a bond which may be converted into shares issued by the same issuer of such bond;

(5) “**structured note**” means a structured note under the *Notification of the Capital Market Supervisory Board concerning Application for and Approval of Offer for Sale of Newly Issued Structured Note*;

(6) “**subordinated bond**” means an **unsecured bond** specifying rights of the bondholder subordinate to the rights of general creditors;

(7) “**company**” means a [private] limited company or public limited company;

(8) “**listed company**” means any company having shares listed on the Stock Exchange of Thailand;

(9) “**offering convertible bond at lower market price**” means offer for sale of **convertible bond** by specifying conversion price considered as **offering new shares at lower market price**;

(10) “**offering new shares at lower market price**” means an offer for sale of newly issued shares having the selling price below 90% of the market price. In this regard, the market price and the selling price shall be calculated in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning the Calculation of Offered Price of Securities and the Determination of Market Price for Consideration of Offer for sale of Newly Issued Shares Being below Market Price*.

Chapter 1 General Provisions

Clause 3 This Notification is applicable to an offer for sale of newly issued **bonds** to investors in foreign countries. In this regard, the interest payable and redemption under such **bonds** shall be denominated in foreign currencies.

An offer for sale of newly issued **bonds** with the following characteristics shall comply with the governing rules as prescribed in each of the Notification of the Capital Market Supervisory Board:

(1) an offer for sale of a **structured note** in which principal and interest are paid in Thai Baht, regardless of whether or not the offer is also made to investors in foreign countries, shall be in accordance with the *Notification of the Capital Market Supervisory Board concerning an Application for and Approval of Offer for Sale of Newly Issued Structured Note*;

(2) an offer for sale of newly issued **bonds** under securitization project to investors in foreign countries shall be in accordance with the *Notification of the Capital Market Supervisory Board concerning an Application for and an Approval of the Offer for Sale of Newly Issued Securitized Bonds*;

(3) an offer for sale of newly issued **bonds** in any other case in which interest payable and redemption under such **bonds** are denominated in Thai Baht, regardless of whether or not the offer is also made to investors in foreign countries, shall be in accordance with the *Notification of the Capital Market Supervisory Board concerning an Application for and an Approval of Offer for Sale of Newly Issued Debt Securities*.

Clause 4 A **company** wishing to offer for sale of newly issued **bonds** to investors in foreign countries shall submit an application to the SEC Office together with evidentiary documentation as specified by the Notification of the SEC Office. In this regard, the applicant would obtain an approval from the SEC Office only if the applicant has complied with the rules as prescribed in this Notification.

In case the application under the first paragraph has offered for sale of newly issued **convertible bonds**, an applicant shall arrange a financial advisor, whose name appears in the SEC Office's approved list, to jointly prepare an information in a notice calling for shareholder's meeting in conforming to Clause 12 unless the applicant itself is being the financial advisor, whose name appears in the SEC Office's approved list.

Clause 5 An applicant shall pay the application fee as specified by the *Notification of the Securities and Exchange Commission concerning Determination of Application Fees for Application regarding Offer for Sale of Newly Issued Securities and Application for Securitization Project*.

Clause 6 The SEC Office shall notify the result of the deliberation of the application within 7 business days as from the date when the SEC Office has received the complete application and the evidentiary documentation.

Clause 7 In deliberating an application, the SEC Office is empowered to give a written notice calling an applicant to provide an explanation or submit additional evidentiary documentation as deemed appropriate within a period specified by the SEC Office. In case the applicant fails to give an explanation or submit additional evidentiary documentation within the specified period, it shall be deemed that the applicant no longer intends to apply for an approval for offer for sale of newly issued *bonds*.

Clause 8 In case there is any certain fact appeared to the SEC Office leading to any of the following reasonable suspicions, the SEC Office may reject the application:

(1) an applicant or an offer for sale of *bonds* has the characteristic or meets the rules or conditions to obtain an approval according to this Notification, but there is a certain fact indicating that the purpose or the substance of such offering is to avoid any provision of the law on Securities and Exchange¹ or this Notification;

(2) the offer for sale of *bonds* may be in contrast to the public interest or national policy;

(3) the offer for sale of *bonds* may cause an adverse effect to the credibility of the Thai Capital Market as a whole;

(4) the offer for sale of *bonds* may cause [i] any damages or [ii] an unfairness treatment to the investors as a whole or [iii] the investors not to obtain correct and sufficient information for supporting the decision to invest.

Clause 8/1 In case of any of the following characteristics, the SEC Office would render a waiver on certain rules under this Notification in deliberating an application or may not apply certain conditions under this Notification with an offer for sale of approved *bonds*, by taking into account the appropriateness and sufficiency of the information for making investment decisions and measures for investor protection. In this regard, the SEC Office may specify additional requirement

¹ Law on Securities and Exchange means the *Securities and Exchange Act B.E. 2535(1992)*

for applicant to act or omit from any act:

- (1) there is a ground to deliberate that such rules or conditions to be waived are immaterial to the deliberation of the approval, and costs outweigh benefits derived from compliance with the rules or conditions;
- (2) an applicant is subject to restrictions under other laws, which restrict it from compliance with the rules or conditions to be waived;
- (3) the applicant has provided other sufficient measures in lieu of its compliance with the rules or conditions to be waived.

Chapter 2

Approval of Offer for Sale of Newly Issued Bonds

Clause 9 An applicant would obtain an approval for an offer for sale of newly issued *bonds* upon complying with the following rules:

- (1) being a *company* established under Thai law;
- (2) being able to demonstrate that an offer for sale of newly issued *bonds* applied for approval shall be made to investors in foreign countries;
- (3) being able to demonstrate that whatsoever purchases, sales or transfers of *bonds* applied for approval shall be made in foreign countries;
- (4) in case of an offer for sale of newly issued *subordinated bonds*, *convertible bonds*, and/or *bonds* in which the issuer provides a bondholder representative, the applicant shall also comply with rules as prescribed in Clause 10, Clause 11, and/or Clause 14.

The approval for offer for sale of *convertible bonds* under the first paragraph would include the approval for offer for sale of underlying shares as well.

Clause 10 An applicant would obtain an approval for an offer for sale of newly issued *subordinated bonds* to investors in foreign countries only if the rights or duties between the issuer and bondholders with respect to repayment under such *subordinated bonds* are clearly specified and the subordinate conditions shall be indicated especially on the following events:

(1) the issuer is subject to the court's receivership order or adjudged by the court as insolvent entity;

(2) the issuer is under a liquidation process for dissolution.

Clause 11 An applicant would be able to offer for sale of newly issued *convertible bonds* and underlying shares only if:

(1) the applicant is a public limited company;

(2) the applicant has provided a notice calling for shareholders' meeting to seek approval for the issuance of underlying shares of *convertible bonds*, In this regard, a notice calling for such shareholders' meeting shall specify information as prescribed in Clause 12;

(3) the applicant has obtained a shareholders' meeting resolution approving the issuance of underlying shares which is sufficient for the exercise of conversion rights and such resolution has been obtained no more than 1 year prior to the date of submitting an application;

(4) *convertible bonds* entitle the right to convert into underlying shares issued by the applicant. In this regard, the underlying shares thereof shall not exceed the ratio as prescribed in Clause 13, unless in case of the offer for sale of *convertible bonds* [i] by the applicant in need of financial supports or [ii] for the purpose of debt restructuring or [iii] with the waiver rendered by the SEC Office depending on necessity and appropriateness and for the benefit of the applicant and shareholders as a whole;

(5) in case an applicant is a *listed company* which wishes to make *offering convertible bonds at lower market price* to a specific person (placement), the applicant has complied with additional requirement as prescribed in Clause 13/1;

(6) the applicant has submitted the following documents to the SEC Office:

(a) a copy of a notice calling a shareholders' meeting;

(b) a copy of a shareholders' meeting resolution.

Provisions in sub clause (2), (3) and (5) of the first paragraph shall not be applicable with respect to the following cases:

(1) an offer for sale of *convertible bonds* and underlying shares by the applicant required to raise its capital under restructuring plan approved by the court under the law on bankruptcy². In this regard, the applicant shall arrange to have sufficient underlying shares for the *convertible bonds* thereof;

(2) any other case which is necessary and appropriate by obtaining a waiver from the SEC Office.

Clause 12 A notice calling a shareholders' meeting as prescribed in Clause 11(2) shall be specified at least the following information:

(1) general information of *convertible bonds*, for instance offering price, exercise price, conversion ratio, [exercise period,] the last day of the exercise period, the number of shares provided for the exercise of conversion rights of *convertible bonds*, or events in which additional underlying shares are needed for the change of conversion right;

In case the applicant has determined the conversion rights under the first paragraph in form of formula referred with the shares price in the future, the number of shares provided for the exercise of conversion rights of *convertible bonds* may be determined in expected quantity. In this regard, the applicant shall demonstrate [i] an assumption to use in determination and [ii] an opinion of board of directors of an applicant and a financial advisor, who jointly prepare information in a written notice calling the shareholder's meeting, for expressing the reasonableness of such assumption.

(2) dilution effect to shareholders, in case the conversion rights are fully exercised, at least indicating the effect to market price of shares (price dilution) and effect to profit dilution or voting rights of existing shareholders (control dilution). In this regard, the applicant shall calculate the dilution from the total shares asked for approval from shareholders;

(3) method for allocating *convertible bonds*;

(4) in case the applicant is a *listed company* which wishes to *offering convertible bonds at lower market price* to a specific person (placement), a notice calling a shareholders' meeting shall additionally have the following details:

² The law on bankruptcy means *Bankruptcy Act B.E. 2483 (1940)*

- (a) objective for *offering convertible bonds at lower market price*;
 - (b) details of newly issued *convertible bonds* and underlying shares in matter relating to the amount of offering for sale, offering price of *convertible bonds*, and conversion price which shall specify the exact price or the highest exact discount;
 - (c) market price used in comparison of the offering price of *convertible bonds* and the conversion price, including the calculation method;
 - (d) in case of having determined the exact offering price, a group of persons expected to be the target of offer for sale shall be specified;
 - (e) the effect to shareholders from *offering convertible bonds at lower market price* that seek approval at this time. In this regard, at least, the effect to market price of shares (price dilution), profit dilution, or voting rights of existing shareholders (control dilution) shall be specified. In this regard, the applicant shall calculate the effect from the total shares asked for approval from shareholders;
 - (f) rights of shareholders to object *offering convertible bonds at lower market price*;
 - (g) opinion of board of directors demonstrating the necessity to *offering convertible bonds at lower market price* by explaining [i] worthiness of the benefit that the *company* is eligible to receive in comparison of the difference between offering price of *convertible bonds* plus conversion price and market price that the company will lose, [ii] suitability and reason supporting the determined market price, and [iii] determination of such offering price.
- (5) any other information as stipulated by the Notification of the SEC Office to protect interest of shareholders.

Clause 13 The number of underlying shares provided for the exercise of conversion rights of *convertible bonds* applied for approval, combining with those provided for the exercise of conversion rights of *convertible bonds* or share warrants issued at any other time, shall not exceed 50% of the *company*'s total number of shares sold.

The calculation of underlying shares in the first paragraph shall be in accordance with the following rules:

- (1) the company's total number of shares sold shall include shares other than the portion provided for the exercise of conversion rights which will be offered for sale together with *convertible bonds* applied for approval (if any);
- (2) the number of shares provided for the exercise of conversion rights of *convertible bonds* or share warrants shall not include shares provided for an offer for sale under the Notification concerning offer for sale of newly issued securities to directors or employees³.

Clause 13/1 In case an applicant is a *listed company* which wishes to make *offering convertible bonds at lower market price* to specified person (placement), the applicant shall additionally comply with the following rules:

- (1) in calling shareholders' meeting to seek shareholders' meeting resolution for *offering convertible bonds at lower market price*, the applicant shall deliver to its shareholders a notice of meeting at least 14 days prior to meeting date;
- (2) delivering proxy statement together with a notice of meeting by demonstrating details relating to at least 1 independent director in order that any shareholder being unable to attend the meeting and exercise his voting rights by himself would be able to give a proxy to exercise the votes on behalf of him. In case the independent director is a person who may be entitled to allotment of *convertible bonds* that are sought the approval, special interests of such independent director shall also be demonstrated;
- (3) obtaining shareholders resolution approving *offering convertible bonds at lower market price* with the votes not less than three-fourths of the total votes of shareholders who attend the meeting and have voting rights. In this regard, there shall be no more than 10% of total votes of shareholders who attend the meeting and vote against such offering.

³ This means the offer for sale of shares under the employee stock option plan (ESOP).

Clause 14 In case an applicant will provide a bondholder representative for any issued bonds, an applicant shall:

(1) propose [the SEC Office] the draft terms and conditions stating the rights and duties of the issuer and holders and draft agreement appointing a bondholder representative which contain at least the details as specified in Section 42(1) to (9) and Section 43(1) and (2) [of the *Securities and Exchange Act B.E. 2535*];

(2) ask for approval to appoint one of the following person as the bondholder representative:

(a) a trustee under the law of the jurisdiction where **bonds** will be offered for sale or where **bonds** will be registered to trade on an exchange; or

(b) a financial institution under the law of the jurisdiction where **bonds** will be offered or where **bonds** will be registered to trade on an exchange, in case the law of the jurisdiction thereof prohibits the establishment of trust.

The approval of the bondholder representative under the first paragraph shall not be subject to other Notifications concerning qualifications and authorities and responsibilities of bondholder representatives issued under Section 41(3) and Section 46 of the *Securities and Exchange Act B.E. 2535 (1992)*.

Clause 14/1 In case there is any fact appeared to the SEC Office after an applicant having obtained an approval to offer for sale of **bonds** that the deliberation of the SEC Office would be changed, if such fact has arisen prior to the approval, the SEC Office is empowered to:

(1) order an approved person, a director or an executive of the approved person to elucidate or disclose additional information within specified period and suspend the approval for issuance of **bonds** or order the approved person to suspend the offer for sale of **bonds** until clarification and correction have been made. In case the approved person, director or executive of approved person is unable to elucidate or rectify the information thereof within the specified period, the SEC Office is empowered to revoke the approval under sub clause (2);

(2) revoke the approval for offer for sale of **bonds** in the portion which has not been offered for sale or subscribed yet.

In giving an order under the first paragraph, the SEC Office shall take into account the following factors:

- (1) severity of facts or circumstances that have been changed;
- (2) effect to investors who have already subscribed such *bonds*.

Chapter 3

Conditions [Complied] after Obtaining Approval

Clause 15 An approved person under this Notification shall report a result of the sale of bonds to the SEC Office in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Reporting a result of the Sale of Securities to Investors in Foreign Countries* within the following periods:

- (1) in case of an offer for sale of *bonds*, the report shall be submitted within 15 days as from the closing date of the offer;
- (2) in case of an offer for sale of shares as a result of the exercise of conversion rights, the report shall be submitted within 15 days as from the last day of each exercise period, except where the rights would be continuously exercised, the report shall be submitted within 15 days as from the last day of the month in which the rights are exercised.

Clause 16 An approved person shall notify the Bank of Thailand the offer for sale of *bonds* to investors in foreign countries within 3 business days as from the closing date of the offer and attach the offering circular therewith.

Clause 17 In case it is necessary for an approved person to change the conversion rights causing newly issued additional underlying shares are needed, and the change of conversion rights is caused by the events as specified in the second paragraph, the approved person is allowed to issue additional underlying shares only if it has submitted the SEC Office a shareholders' resolution approving the issuance of such additional underlying shares.

The approved person would be able to change the conversion rights in order to maintain the benefit of convertible bond holders not to be adversely affected by any of the following events:

- (1) when the par value of shares of the approved person has been changed as a result of combination or split of shares;
- (2) when the approved person has subsequently offered for sale of newly issued shares at the price lower than the price calculated by using the market price at the time of offer of such shares or in the period prior thereto. In this regard, the calculation shall be conducted by the method as specified in terms and conditions or represented in documents given to convertible bond holders;
- (3) when the approved person has subsequently offered for sale of newly issued warrants or *convertible bonds*, where the price of newly issued underlying shares is lower than the price calculated by using the market price at the time of offer of such warrants or bonds or in the period prior thereto. In this regard, the calculation shall be conducted by the method as specified in terms and conditions or represented in documents given to convertible bond holders [affected by such newly issued warrants or *convertible bonds*];
- (4) when the approved person has paid out stock dividend, either wholly or partially, to shareholders;
- (5) when the approved person has paid out cash dividend in the amount exceeding the number as specified in terms and conditions or represented in documents given to convertible bond holders;
- (6) when any other event similar to those in sub clauses (1) (2) (3) (4) or (5) causing adverse effect on the benefit of convertible bond holders.

Clause 17/1 In case newly issued *convertible bonds* obtained an approval to offer for sale under this Notification has specified conversion price and ratio varied to market price of underlying shares and it is necessary to issue new underlying shares for the result of exercising conversion right, an approved person is eligible to issue such additional underlying shares only when the approved person has obtained an approval from the shareholder resolution to issue sufficient amount of shares for exercise of such conversion rights and has submitted such resolution to the SEC Office.

Clause 17/2 An approved person under this Notification shall arrange to have agreement relating to damages and other remedial measures which convertible bonds holder is entitled to receive in case the approved person is unable to deliver underlying shares to the holders thereof.

Clause 18 An approved person under this Notification shall distribute an offering circular to investors in foreign countries prior to closing. In this regard, such offering circular shall clearly indicate whether there is a restriction to incur debt in the future or not and in case there is the restriction thereto, the consequence of violation of such restriction shall be indicated. Additionally, the offering circular thereof shall be submitted to the SEC Office within 15 days as from the closing date of the offer.

Clause 19 In case an approved person has rights to force conversion, the approved person shall indicate such condition in the offering circular.

Clause 20 An approved person under this Notification shall complete its offer for sale of newly issued *bonds* within 6 months as from the date when the SEC Office has notified its approval or within the period waived, but not exceeding 12 months as from the date when the SEC Office has notified its approval, by the SEC Office. For rendering a waiver, the SEC Office may request the approved person to submit additional information or documents. In case the approved person fails to complete its offer for sale within the specified period of time, the approval shall be deemed terminated.

The underlying shares shall be exercised under conversion rights before the maturity date of the *convertible bonds*. If they are not fully exercised until the expiration of the exercise period, the approval of the remaining issued underlying shares of the unexercised conversion rights shall be deemed terminated.

Chapter 4
Transitional Provisions

Clause 21 An approved person under the *Notification of the Securities and Exchange Commission No. KorJor. 47/2541 Re: Rules, Conditions, and Procedures for Application for and Approval of Offer for Sale of Newly Issued Bonds to Investors in Foreign Countries* dated 25 December 1998 shall remain subject to such Notification and relating Notifications.

Clause 22 The *Notification of the Office of the Securities and Exchange Commission No. SorJor. 4/2542 Re: Application Form for Approval of Offer for Sale of Newly Issued Bonds to Investors in Foreign Countries* dated 10 February 1999 shall remain in full force subject to this Notification until the new one is promulgated instead.

Notified this 13th day of March 2009.

-Signature-

(Vijit Supinit)

Chairman

The Securities and Exchange Commission

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