

## TRANSLATION

*Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.*

### Notification of the Office of the Securities and Exchange Commission

No. Sor Or. 8/2556

Re: Arbitral Procedure Organized by the SEC Office

(No. 2)

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Whereas it is necessary for the SEC Office to improve its arbitral procedure and methods for settlement of disputes by arbitration so that they become more convenient and faster, and better conform to practice, the SEC Office therefore issues the following regulations:

**Clause 1** The definition of “*stock exchange*” in Clause 3 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed.

**Clause 2** The provisions of Clause 6 and Clause 7 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“Clause 6 A dispute which may be submitted by a claimant to arbitration organized by the SEC Office shall have the following characteristics:

(1) the dispute arises from the respondent’s failure to comply with a contract, or the law on securities and exchange<sup>1</sup>, the law on provident funds<sup>2</sup>, or the law on derivatives<sup>3</sup>, or rules prescribed by the Securities and Exchange Commission, the Capital Market Supervisory Board, the SEC Office, the Stock Exchange of Thailand, or Thailand Futures Exchange;

(2) each claimant seeks compensation not exceeding one million baht; and

(3) in cases where the dispute arises from provision of securities services or failure to comply with the law on securities and exchange<sup>1</sup>, the law on provident

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<sup>1</sup> The law on securities and exchange means the *Securities and Exchange Act B.E. 2535 (1992)*.

<sup>2</sup> The law on provident funds means the *Provident Fund Act B.E. 2530 (1987)*.

<sup>3</sup> The law on derivatives means the *Derivatives Act B.E. 2546 (2003)*.

funds<sup>2</sup>, or any rules issued by virtue of such laws, such dispute shall also have the following characteristics to be eligible for submission to arbitration:

(a) having arisen no more than six months from the date on which the claimant becomes aware or should have been aware of the cause of such dispute, but no more than one year from the day on which the cause which is the basis of the claim has taken place, except where the SEC Office deems it necessary and appropriate;

(b) being between a natural person who agrees to receive, receives or uses services, or enters into a contract with the respondent relating to securities or securities business, or between a provident fund member and the respondent, provided that the claimant shall exhibit documentary evidence or cite a contractual provision whereby the respondent gives consent to submission of dispute to arbitration organized by the SEC Office;

(c) having been filed through the complaint system as prescribed by the *Notification of the Capital Market Supervisory Board* or the *Notification of the Office of the Securities and Exchange Commission*, as the case may be, concerning *Handling of Customer Complaints*, and it appears that:

1. the claimant is not contacted by a complaint handling officer according to the said notifications within fifteen days from the date on which the claimant files the complaint;

2. the claimant's complaint is not resolved within forty-five days from the date on which the claimant files the complaint, unless the claimant agrees to extend such period; or

3. the claimant opines that the resolution of the complaint is inappropriate, provided that the claimant reserves the right to submit the matter to arbitration.

Clause 7 To submit a dispute to the SEC Office, the claimant shall file a statement of claim in Form Or Yor. 1 prescribed by the SEC Office, together with the required evidentiary documentation as specified in such form, and shall make sufficient copies of the statement of claim to be delivered to the responding party.”

**Clause 3** The provisions of sub-clause (1) of Clause 9 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“(1) after the complete and correct documentation has been filed by the claimant according to Clause 7 and the claimant has placed a deposit in full for the arbitrator’s fee under Clause 32 and the remuneration for arbitration under Clause 34, the SEC Office shall accept the statement of claim and deliver a copy of such statement of claim to each respondent at the address indicated in the statement of claim via registered mail;”

**Clause 4** The provisions of Clause 10 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“Clause 10 After receiving a copy of the statement of claim, the respondent may file with the SEC Office an opposition to the statement of claim as per Form Or Yor. 3 prescribed by the SEC Office, together with sufficient copies of the opposition to the statement of claim to be delivered to the claiming party, within fifteen days from the date of receipt of the copy of the statement of claim. The respondent shall place a deposit for the arbitrator’s fee under Clause 32 and the remuneration for arbitration under Clause 34 at the time of the filing of the opposition, or within the last day of the opposition period.

Upon receipt of the opposition under the first paragraph, the official assigned by the SEC Office shall proceed as follows:

(1) in cases where the opposition in Form Or Yor. 3 filed by the respondent is complete and correct and the respondent has placed a deposit in full for the arbitrator’s fee under Clause 32 and the remuneration for arbitration under Clause 34, the SEC Office shall accept the opposition and deliver a copy of such opposition to each claimant at the address indicated in the statement of claim via registered mail; or

(2) in cases where the opposition in Form Or Yor. 3 filed by the respondent is incomplete or unclear, the SEC Office shall instruct the respondent to correct or amend such errors within thirty days from the notifying date of the SEC Office.”

**Clause 5** Chapter 3: Mediation of Dispute, comprising Clause 12 and Clause 13, of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed.

**Clause 6** The provisions of Clause 14 and Clause 15 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“Clause 14 Arbitral proceedings shall be conducted by one arbitrator who makes a final award, to be selected by the parties to the dispute from the SEC Office’s list of arbitrators according to the following methods, except in case of multiple dependent claimants whereby Clause 15 may apply:

(1) the claimant shall select three arbitrators ranked in order of preference and notify the SEC Office in writing of the selected arbitrators within fifteen days from the date of filing of the statement of claim; otherwise, it shall be deemed that the claimant no longer intends to continue the arbitral proceedings and the SEC Office shall cease the proceedings for such dispute, except where the SEC Office deems it necessary and appropriate;

(2) after the SEC Office has submitted the claimant’s selected list of three arbitrators to the respondent, the respondent shall rank the three arbitrators by preference and provide his/her list to the SEC Office within seven days from the receipt of the claimant’s list, the name ranked first being deemed as the most desirable arbitrator to the respondent. If the respondent fails to provide his/her list of arbitrators within such period of time, it shall be deemed that the respondent agrees with the order of the arbitrators selected by the claimant;

(3) in cases where the respondent desires to object to all of the three arbitrators selected by the claimant because there are justifiable doubts as to their independence or impartiality, the respondent shall submit to the SEC Office a written objection describing the reasons for the objection in Form Or Yor. 6 prescribed by the SEC Office within seven days from the date of receipt of the name list. In such event, the SEC Office shall proceed as follows:

(a) if the SEC Office opines that such objection is based on reasonable grounds, the procedures under sub-clauses (1) and (2) shall apply *mutatis mutandis* until none of the arbitrators on the SEC Office’s list can be appointed; or

(b) if the SEC Office opines that such objection is not based on reasonable grounds, the SEC Office shall instruct the respondent to rank the three arbitrators selected by the claimant by his/her preference within seven days from the

SEC Office's notification of the instruction; otherwise, it shall be deemed that the respondent agrees with the order of the arbitrators selected by the claimant;

(4) in cases where the arbitrator mutually selected by the parties cannot perform his/her duty, it shall be deemed that the parties desire to appoint the arbitrator who is ranked next. If all of the three arbitrators fail to perform their duty, the procedure under subclauses (1) and (2) of the first paragraph shall be repeated until none of the arbitrators on the SEC Office's list can be appointed.

In cases where none of the arbitrators on the SEC Office's list can be appointed or the parties cannot select an arbitrator within sixty days from the date when the SEC Office receives the statement of claim and all required documentation according to the dispute acceptance rules, it shall be deemed that the parties no longer intend to continue the arbitral proceedings and the SEC Office shall cease the proceedings for such dispute, except where the SEC Office deems it necessary and appropriate.

Clause 15 In case of a dispute submitted by multiple dependent claimants under Clause 8 and the total amount of the compensation demanded exceeds one million baht, the claimants may request in the statement of claim that a panel of three arbitrators be appointed. In such event, the respondent may indicate whether he/she agrees with a panel of three arbitrators in the opposition under Clause 10.

In cases where the parties agree to appoint a panel of three arbitrators, the parties shall select arbitrators from the SEC Office's list of arbitrators by the following methods:

(1) the claimant shall select one arbitrator and notify the SEC Office of his/her selection in writing within fifteen days from the last day of the opposition period; otherwise, it shall be deemed that the claimant no longer intends to continue the arbitral proceedings and the SEC Office shall cease the proceedings for such dispute, except where the SEC Office deems it necessary and appropriate;

(2) the respondent shall select one arbitrator and notify the SEC Office of his/her selection in writing within fifteen days from the last day of the opposition period; otherwise, the SEC Office shall select one arbitrator on the respondent's behalf;

(3) the arbitrators selected under sub-clauses (1) and (2) of the second paragraph shall jointly select another arbitrator, who will be the chairman of the arbitration panel.

If the respondent refuses a panel of three arbitrators or the respondent does not indicate whether he/she agrees with a panel of three arbitrators within the specified period of time, it shall be deemed that the respondent desires to have one arbitrator. In such event, the claimant shall select three arbitrators ranked in order of his/her preference and provide the list to the SEC Office, in writing, within fifteen days from the date on which the SEC Office notifies the claimant of the respondent's refusal or failure to indicate his/her intention. If the claimant fails to provide the list of his/her selected arbitrators within such period of time, it shall be deemed that the claimant no longer intends to continue the arbitral proceedings and the SEC Office shall cease the proceedings for such dispute, except where the SEC Office deems it necessary and appropriate. In cases where the appointed arbitrator cannot perform his/her duty, the provisions of sub-clause (4) of the first paragraph and the second paragraph of Clause 14 shall apply *mutatis mutandis*.

**Clause 7** The following provision shall be added as the second paragraph of Section 29 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008:

“If necessary, the arbitrator may, at his/her discretion, reasonably extend the period of time.”

**Clause 8** The provisions of the first paragraph of Clause 30 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“In cases where the arbitrator does not decide on any material matter, either party may file with the SEC Office a motion requesting that the arbitrator issue an additional award on such matter within thirty days from the date on which such party receives a copy of the arbitral award. However, if necessary, the arbitrator may, at his/her discretion, reasonably extend the period of time.”

**Clause 9** The provisions of the first paragraph of Clause 32 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“The arbitrator’s fee shall be charged at a rate of two percent of the amount of compensation claimed, but not less than ten thousand baht. The arbitrator shall determine which party shall pay the arbitrator’s fee.”

**Clause 10** The provisions of Clause 33 and Clause 34 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“Clause 33 If the claimant does not place a deposit for the arbitrator’s fee and the remuneration for arbitration as specified in Clause 9(1), it shall be deemed that the claimant no longer intends to continue the arbitral proceedings.

Clause 34 The arbitrator appointed by the parties to make an arbitral award shall be entitled to receive remuneration in the amount of ten thousand baht for each dispute, each party being responsible for half of the amount.”

**Clause 11** The provisions of Clause 36 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008 shall be repealed and replaced with the following provisions:

“Clause 36 Each party shall be responsible for half of the expenses incurred in the arbitral proceedings. The SEC Office shall give financial assistance to the claimant as it deems appropriate.

For the sake of calculating the expenses under the first paragraph, it shall be deemed by the SEC Office that arbitral proceedings in each case commence on the date on which the arbitrator is appointed.”

**Clause 12** The following shall be added as Chapter 8: Extension of Periods of Time and Clause 37 of the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008:

“Chapter 8  
Extension of Periods of Time

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Clause 37 In cases where the claimant or the respondent is unable to take any of the following actions within a specified period of time because of a reasonable and appropriate reason, the claimant or the respondent shall file with the SEC Office a motion for extension of the period of time prior to the end of such period, and the SEC Office shall extend the period of time as deemed appropriate:

- (1) amendment of the statement of claim under Clause 9(3) or the opposition to the statement of claim under sub-clause (2), the second paragraph of Clause 10 prior to commencement of arbitration proceedings under Chapter 5;
- (2) filing of an opposition to the statement of claim under Clause 10;
- (3) notification of the list of arbitrators selected, objection to the list of arbitrators, and selection of arbitrators under Clause 14 and Clause 15; and
- (4) objection to appointment of an arbitrator under Clause 18.”

**Clause 13** For a dispute submitted by the claimant to the SEC Office prior to the effective date of this Notification, the SEC Office shall be responsible for the remuneration for arbitration and expenses incurred by the claimant and the respondent in the arbitral proceedings, starting from the commencement of such dispute until the end of the arbitral proceedings, when an arbitral award is issued, or until the arbitrator orders the arbitral proceedings to be ceased according to the rules under the *Notification of the Office of the Securities and Exchange Commission Re: Arbitral Procedure Organized by the SEC Office* dated 14 May 2008, prior to the amendment by this Notification.

**Clause 14** For a dispute submitted by the claimant through the complaint system as prescribed by the *Notification of the Capital Market Supervisory Board* or the *Notification of the Office of the Securities and Exchange Commission*, as the case may be, *concerning the Handling of Customer Complaints* and it appears that the complaint is not satisfactorily resolved prior to the effective date of this Notification, the terms regarding the characteristics of a dispute which may be submitted to arbitration organized by the SEC Office under the rules which were effective prior to the effective date of this Notification shall continue to apply and the terms amended by Clause 2 of this Notification shall not apply.

**Clause 15** This Notification shall come into force as from 16 March 2013.



Notified this 18th day of February 2013.

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission