

TRANSLATED VERSION
codified up to No.2 as of July 10, 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. 3/2558

**Re: Provisions relating to Offer for Sale of Shares Issued
by Foreign Company of which Shares are not Traded
in Foreign Exchange**

By virtue of Sections 16/6 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 Sections 35, Section 67, Section 69 and Section 80 of the *Securities and Exchange Act B.E. 2535 (1992)*, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 This Notification shall come into force as from 1 May 2015.

Clause 2 In this Notification and the application form as stipulated by this Notification:

The terms “*institutional investor*”, “*listed company*”, “*parent company*”, “*subsidiary company*”, “*same level subsidiary company*”, “*associated company*”, “*connected person*”, “*executive*”, “*major shareholder*”, “*controlling person*”, “*possible conflict person*” and “*consolidated financial statement*” shall have the same meaning as defined in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in the [Other] Notifications Relating to Issuance and Offer for Sale of Securities*.

“*foreign company*” means a company established under foreign law.

“*CLMV company*” means a *foreign company* established under one of *CLMV countries*’ law.

“*CLMV countries*” means the Kingdom of Cambodia, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar and the Socialist Republic of Vietnam.

“*registration statement*” means a registration statement for offer for sale of securities issued by a *foreign company*.

“**holding company**” means a **foreign company** whose core business is holding shares of other companies and none of significant manufacturing, distribution or service.

“**Thai company**” means a company established under Thai law and listed in the Stock Exchange of Thailand.

“**executive director**” means a director holding position as an **executive** or acting as the **executive**, including a director who has been authorized as a signatory unless it is demonstrated that affixation of his signature must be under the resolution of the board of directors and must co-sign with other directors.

“**governmental office**” means a governmental office which is classified to be a part of central government under the law on state administration¹.

“**significant shareholder**” means a person holding shares of any incorporation in the amount of more than 10% of the total number of voting rights of such incorporation. In this regard, a number of shares held by such person shall be included the shares held by its **connected persons**.

“**related party transaction**” means the execution of the transaction between a company or its **subsidiary company** and the **related person** of the company.

“**related person**” means a related person according to the Notification of the Capital Market Supervisory Board issued by virtue of Section 89/1 [of the *Securities and Exchange Act B.E. 2535 (1992)*].

“**Thai person**” means:

- (1) a natural person holding Thai citizenship;
- (2) a juristic person registered in the Kingdom of Thailand, excluding the juristic person having foreign person holding its shares directly or indirectly more than 50% of the total number of voting rights;
- (3) the juristic person which is not registered in the Kingdom of Thailand but having the following persons holding its shares altogether more than 50% of the total number of voting rights:
 - (a) a natural person under sub clause (1);
 - (b) the juristic person under sub clause (2);

¹ Law on State Administration means the *State Administration Act B.E. 2534 (1990)*

(4) the juristic person of which shares are held by other juristic person stated in sub clause (3) more than 50% of total voting rights, regardless of direct shareholding or through the form of downward shareholding chain of which each level is other juristic person similar to the one stated in sub clause (3) and its shares are also held by the upper one more than the same ratio thereof;

(5) the juristic person in which the persons under sub clause (1), (2), (3) or (4) have power to control its business.

“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*.

“financial institution business” means banking business, finance business, securities business, credit foncier business, life insurance business and non-life insurance business, whether operating under Thai or foreign law.

“local auditor” means an auditor being able to legally audit according to laws or rules of the country where a *foreign company* has been established.

Part 1

General Provisions

Chapter 1

Scope of the Notification

Clause 3 This Notification only relates to an offer for sale of shares issued by a *foreign company* under the following substances:

(1) there shall be the offer for sale of newly issued shares to the public by the *foreign company* of which shares have not yet been traded in any foreign Exchange in order to [i] register such shares as listed securities on the Stock Exchange of Thailand or [ii] raise fund after the *foreign company* has become a listed company. In this regard, such offering shall conform to the following rules:

(a) the *foreign company* which is not a *CLMV company* under sub clause (b) shall comply with the rules relating to an approval in Part 2 and the submission of the *registration statement* and draft prospectus in Part 4;

(b) the *CLMV company* shall comply with the rules relating to an approval in Part 3 and the submission of the *registration statement* and draft prospectus in Part 4;

(2) the offer for sale of shares by the shareholders of the *foreign company* shall conform to rules relating to the *registration statement* and draft prospectus in Part 4.

Clause 4 A *foreign company* as prescribed in Clause 3 would be able to offer for sale of newly issued shares in the Kingdom of Thailand, only if the value of shares which would be granted an approval is not exceed the allotted quota determined by the Bank of Thailand for controlling the execution of transaction in the capital market relating to foreign currencies.

Chapter 2

Language for submitting information or documentation

Clause 5 The submission of information or documentation to the SEC Office shall be conformed to the following rules. In this regard, the SEC Office may render a waiver if it is necessary and appropriate:

(1) a person having duty according to this Notification would be able to submit the information or the documentation prepared in any of the following languages:

- (a) Thai;
- (b) English;
- (c) both Thai and English;

(2) in case the information or the documentation submitted to the SEC Office has been translated from other languages other than Thai or English, a person having duty according to this Notification shall also:

(a) have the translator certifying that it is a true and accurate translation of the original information or documentation;

(b) certify that the description in the translated version is actual thing or true existence, and the material fact is not concealed.

Where whichever language was used for information or documentation submitted to the SEC Office under this Notification [according to sub clause (1) of the first paragraph], such language shall be used for all subsequent submission except the SEC Office has rendered a waiver whenever it is necessary or appropriate.

Chapter 3

Powers of the SEC Office

Clause 6 This Clause is repealed.

Clause 7 In case there is a certain fact appeared to the SEC Office leading to any of the following reasonable suspicions, the SEC Office may reject the application for approval under Part 2 or Part 3:

- (1) an applicant or an offer for sale of securities 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 provisions of law on Securities and Exchange² or this Notification;
- (2) the offer for sale of securities may be in contrast with the public interest or national policy;
- (3) the offer for sale of securities may cause an adverse effect to the credibility of the Thai capital market as a whole;
- (4) the offer for sale of securities may cause [i] any damages or [ii] an unfair 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 In case there is any certain fact appeared to the SEC Office after an applicant having obtained an approval to offer for sale of newly issued shares under Part 2 or Part 3 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 the applicant, a director or an *executive* to elucidate or disclose additional information within the specified period, and order a *foreign company* to suspend the offer for sale of shares until clarification and correction has been made;

² Law on Securities and Exchange means The *Securities and Exchange Act B.E. 2535 (1992)*.

(2) order the applicant to suspend the offer for sale of shares in the portion which has not been offered or subscribed yet, and order to discharge the approval in such portion.

Clause 9 In case of any of the following circumstances, 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 shares according to Part 2 or Part 3:

(1) there is a ground to consider that such rules or conditions to be waived are immaterial to the consideration of such approval, and costs outweigh benefits derived from compliance with the rules or conditions;

(2) an applicant is subject to restrictions under other laws, whether under Thai or foreign law, which constrain 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.

For rendering a waiver under the first paragraph, the SEC Office shall mainly consider [i] the appropriateness and the sufficiency of the information for supporting the investors to make decision for investing and [ii] measures for protecting the investors. In this regard, the SEC Office may determine an additional requirement for the applicant to comply with.

Clause 10 The SEC Office is empowered to render a waiver for disclosure of details of information additionally stipulated under this Notification, in case the offeror would be able to demonstrate that [i] such information shall not materially affect the investment decision of the investors and [ii] there is a reasonable ground not to disclose the details of such information in the *registration statement*, or there are other sufficient measures having already been replaced such disclosure.

Clause 11 In deliberating the information in a *registration statement* and the draft prospectus under Part 4, the SEC Office is empowered to order an offeror to proceed the following actions within the specified period, in case it is necessary and appropriate to ensure that the investors will have sufficient information for their decision of investment:

(1) disclose an additional information which may affect the decision of the investors;

(2) amend the information or submit an additional information;

(3) arrange an independent expert to prepare an opinion relating to the accuracy, completeness or reliability of the information appeared in the *registration statement* and the draft prospectus.

In case the offeror fails to comply with the SEC Office's order under the first paragraph, it shall be deemed that the offeror is no longer wish to submit the *registration statement* and the draft prospectus to the SEC Office.

Part 2
Offer for Sale of Newly Issued Shares in Manner of
Public Offering

Chapter 1
Submission of an application

Clause 12 A *foreign company* wishing to make an offer for sale of newly issued shares to the general public shall submit an application together with the evidentiary documentation by complying with form and procedure as stipulated by the Notification of the SEC Office.

An application submitting under the first paragraph shall be jointly prepared by a financial advisor whose name appears in the SEC Office's approved list.

Clause 13 An applicant shall pay application fees at the amount as prescribed in the *Notification of the Securities and Exchange Commission Re: Determination of Fees for Application regarding Offer for Sale of Newly Issued Securities and Application for Securitization Project* to the SEC Office on the date when the complete and accurate application together with the evidentiary documentation have been submitted in accordance with the Licensing Manual for the Public.

Clause 13/1 After the SEC Office has already received the complete and accurate application and the evidentiary documentation as prescribed in the Licensing Manual for the Public, the SEC Office shall ascertain the facts [declared in the application] in accordance with the procedure and method as prescribed in the Licensing Manual for the Public, and notify in a written form with regard to skeptical issues resulted from the ascertaining process

for the applicant to clarify the issues within a specified period. In this regard, the whole aforementioned process shall be within 120 days as from the date when the SEC Office has received the complete and accurate application and the evidentiary documentation as prescribed in the Licensing Manual for the public.

The SEC Office shall notify the result of deliberating the application within 45 days as from the date of receiving the written clarification on the skeptical issues from the applicant.

In case the applicant wishing to apply for a waiver of regulations under this Notification, such applicant shall submit an application for such waiver together with evidentiary documentation to the SEC Office in accordance with the procedure and method as prescribed in the Licensing Manual for the Public before the SEC Office begins to consider the application under the second paragraph. In this regard, the SEC Office shall consider the application for the waiver within the same period as the consideration of the application under the second paragraph.

Chapter 2

Rules for an approval

Clause 14 An applicant would obtain an approval for an offer for sale of newly issued shares to the general public only if the applicant would be able to demonstrate to the satisfaction of the SEC Office that the applicant's business is not involved in illegal business activities irrespective of Thai or foreign law, including it meets the following requirements:

(1) during the 5 years prior to submitting the application, the applicant shall have no record on violation of material matters on rules relating to the offer for sale of securities irrespective of law or regulations of Thailand or other foreign jurisdictions being applicable to the applicant;

(2) having received an explicit resolution of shareholders, which is not more than 1 year before the date of submitting the application, to offer for sale of newly issued shares;

(3) passing through the following screening criteria completely:

(a) the provisions relating to legal issues and the cooperation of foreign agency as prescribed in Division 1;

- (b) the provisions relating to shareholders and protection as prescribed in Division 2;
- (c) the provisions relating to the management as prescribed in Division 3;
- (d) the provisions relating to the disclosure of information as prescribed in Division 4;
- (e) the provisions relating to the financial advisor as prescribed in Division 5;
- (f) the provisions of sub clause (a), (b), (c), (d) and (e) as well as the provisions under Part 6 in case of the applicant being a holding company;
- (g) the provisions of sub clause (a) to (f) as well as the provisions under Part 7 in case of the applicant being a listed company.

Division 1

Provisions relating to legal issues and cooperation of foreign agency

Clause 15 An applicant shall demonstrate that it is able to offer for sale of newly issued shares in accordance with the laws and regulations of the jurisdiction where the applicant is subject to.

Clause 16 An applicant shall demonstrate that the laws and regulations of foreign jurisdictions being applicable to an applicant shall have rules relating to corporate governance and essential shareholder protection which are comparable to the laws and regulations regulating *Thai company*, otherwise it provides a mechanism for the corporate governance and the essential shareholder protection being comparable to the relevant laws and regulations of the Kingdom of Thailand.

Clause 17 There is no reasonable ground to suspect that the regulator of the capital market of the following jurisdictions are unable to provide an [cooperation and] assistance in inspection and providing information relating to breach or fail to comply with any provision of law on Securities and Exchange³ or any rules issued by virtue of such law:

- (1) the jurisdiction where the applicant has established;
- (2) the jurisdiction where the applicant has materially operated the business.

³ Law on Securities and Exchange means The *Securities and Exchange Act B.E. 2535 (1992)*

Division 2**Provisions relating to shareholders and protection**

Clause 18 An applicant's shareholding structure shall be clear, fair and in compliance with the rules as prescribed in Clause 19, Clause 20 and Clause 21.

Clause 19 The shareholding structure of an applicant, its *subsidiary company* and its *associated company* shall:

- (1) explicitly reflect both controlling power and interest of the shareholders;
- (2) have no *possible conflict person* of the applicant holding shares in its *subsidiary company* or *associated company* more than 10% of the total number of voting rights of each company thereof unless the applicant would be able to demonstrate that shareholding of such person more than such 10% is for the best interest of the applicant.

Clause 20 The cross shareholding between an applicant and *any other company* shall not be opposed or contrary to the rules as prescribed in Clause 21 unless the applicant is able to demonstrate that such cross shareholding meets the conditions as prescribed in Clause 22:

For the purpose of the deliberation under Clause 21 and Clause 22:

- (1) in deliberating shareholding proportion, the calculation shall be based on the total number of voting shares of the juristic person being held;
- (2) the term "*any other company*" shall also include any limited partnership or other business having the similar nature.

Clause 21 The cross shareholding between an applicant and *any other company* shall not be opposed or contrary to the following rules:

- (1) in case of holding shares more than 50%:
 - (a) the applicant shall not hold shares of *any other company* in case such company holds shares of the applicant more than 50%;
 - (b) in case the applicant holds shares of *any other company* more than 50%, such company shall not hold shares of the applicant;
 - (c) in case the applicant holds shares of 2 or more of *any other company* more than 50% of each, there shall be no cross shareholding among such companies;
- (2) in case of holding shares more than 25% but no more than 50%:

(a) the applicant shall not hold shares of *any other company* more than 10% in case such company holds shares of the applicant more than 25% but no more than 50%;

(b) in case the applicant holds shares of *any other company* more than 25% but no more than 50%, such company shall not hold shares of the applicant more than 10%;

(3) in case of holding shares no more than 25%:

(a) the applicant shall not hold shares of *any other company* more than 25%, in case such company holds shares of the applicant no more than 25%;

(b) in case the applicant holds shares of *any other company* no more than 25%, such company shall not hold shares of the applicant more than 25%.

For the purpose of the consideration under the first paragraph:

(1) in deliberating the shareholding of the applicant or *any other company*, the shareholding, whether direct or indirect, of the following persons shall be counted in the shareholding of the applicant or *any other company*, as the case may be:

(a) the indirect shareholding of the applicant or *any other company*, as the case may be, through other juristic persons in all levels of the chain of shareholding as long as the shareholding in each level is more than 25%;

(b) a natural person holding more than 25% of shares of the applicant or the person under sub clause (a) which is in the chain of the applicant;

(c) a natural person holding more than 25% of shares of *any other company* or the person under sub clause (a) which is in the chain of *any other company*;

(d) the shareholding of a spouse or a minor child of the person under sub clause (b) or (c);

(2) the SEC Office is empowered to issue the Notification relating to the counting of the shareholding of any person in the manner of indirect cross shareholding which affects the clarity in the shareholding structure.

Clause 22 An applicant may be rendered a waiver for whether direct or indirect cross shareholding with *any other company* without being subject to Clause 21 upon attaining to any of the following conditions:

(1) there is another group of shareholders having shareholding more than the amount, as stated in Clause 21, held by the applicant or *any other company*, as the case may be, in the manner of counterbalance of controlling power in a company provided that such another group of shareholders are not *persons having relationship* of the applicant or

any other company;

(2) the cross shareholding is necessary and appropriate and does not cause unfairness to [other] shareholders.

For the purpose of consideration under the first paragraph, the term “*persons having relationship*” means any *possible conflict person, mutatis mutandis*.

Clause 23 An applicant shall appoint a local representative in the Kingdom of Thailand for the purpose of coordinating and contacting with any person including receiving notice, order, summon or any other document relevant to the applicant, and shall be able to demonstrate that such representative has ability to perform the assigned duties. In this regard, the representative thereof shall be Thai nationality and have a residence in the Kingdom of Thailand.

Clause 24 There is no reasonable ground to suspect that the management of the affairs of an applicant would not protect shareholders’ right or provide fair treatment to shareholders.

Clause 25 An applicant’s directors, *executives* and *major shareholders* have no conflict of interest with the best interests of the applicant, unless the applicant would be able to demonstrate that there is a mechanism to ensure that the management of the affairs of the company is for the best interests of the applicant and its shareholders as a whole.

Division 3

Provisions relating to management

Clause 26 It shall be demonstrated that the board of directors of an applicant has realized its roles, duties and responsibilities to shareholders thoroughly and directors are capable to perform their duties.

In case the board of directors has appointed the general manager or any other person to act on its behalf for any matter, such appointment shall be made in writing or by clearly recorded resolution of the board of directors’ meeting. In this regard, the scope of authority of the appointee shall be clearly stated.

Clause 27 There is no certain fact appeared [to the SEC Office] that an applicant’s directors, *executives* and *controlling persons* have the following unqualified characteristics:

(1) deficiency in legal competence, for instance, being an insolvent person, incompetent or quasi-incompetent person;

(2) having or plausibly having any of the following behaviors. In this regard, the SEC Office would deliberate retrospective behavior for no more than 10 years:

(a) breaching the duty of director or *executive* in performing with responsibility, due care and loyalty including breaching or failing to comply with [relevant] laws, objectives or articles of corporation, and the resolutions of the board of directors or of the shareholders' meeting;

(b) breaching the law relating to the supervision of the capital market whether under Thai or foreign law in the following matters:

1. engaging in any unfair trading of securities or exploiting investors in trading securities or derivatives;

2. undertaking dishonestly or causing damage to properties, creditors or the public;

3. failing to perform duty with responsibility, due care and loyalty;

4. intentionally making false statements or concealing material facts which should have been stated;

5. operating in securities business or derivatives business without license in a manner to defraud public;

(c) breaching the law on money laundering whether under Thai⁴ or foreign law, and having been subject to the court's judgment or order relating to confiscation of the illicit asset or any other similar judgment or order.

Clause 28 An applicant shall have at least 2 directors having Thai nationality and a residence in the Kingdom of Thailand, and one of such director shall be an audit committee as prescribed in Clause 32.

Clause 29 The structure of the board of directors and the management shall be adequately provided check and balance mechanism by at least comply with the rules as prescribed in Clause 30 and Clause 32.

Clause 30 At least one-third of the board size of an applicant, but not less than 3 persons, shall be independent directors. In this regard, each independent director shall

⁴ the law on money laundering under Thai Law means The *Anti – Money Laundering Act B.E. 2542 (1999)*

be compliance with the following rules:

(1) holding shares not more than 1% of the total number of voting rights of [i] the applicant and [ii] its *parent company, subsidiary company, associated company, major shareholder* or *controlling person*. For the purpose of calculation of such holding, shares held by *connected persons* of such independent director are included;

(2) neither being nor having been *executive director*, casual worker, employee, advisor who receives salary, or *controlling person* of [i] the applicant and [ii] its *parent company, subsidiary company, associated company, same level subsidiary company, major shareholder* or *controlling person*, unless the foregoing status has ended not less than 2 years prior to the date of submitting an application [under Clause 12] to the SEC Office. In this regard, such prohibited characteristics do not apply to a case where the independent director used to be a government official or an advisor of a *governmental office* which is a *major shareholder* or *controlling person* of the applicant;

(3) not being a person having family relation or legal relation, as father, mother, spouse, sibling, child, or spouse of child, of other directors, *executive, major shareholder, controlling person*, or any person nominated to be director, *executive* or *controlling person* of the applicant or its *subsidiary company*;

(4) neither having nor having had a *business relationship* with [i] the applicant and [ii] its *parent company, subsidiary company, associated company, major shareholder* or *controlling person* in the manner which may interfere with [the independent director's] judgement, including neither being nor having been a *significant shareholder* or *controlling person* of any person having a *business relationship* with [i] the applicant and [ii] its *parent company, subsidiary company, associated company, major shareholder* or *controlling person*. In this regard, the foregoing prohibited relationship does not apply to a case [i] of which relationship has ended not less than 2 years prior to the date of submitting an application [under Clause 12] to the SEC Office or [ii] being an exemption as prescribed in Clause 31.

The term "*business relationship*" under the first paragraph shall include [i] any normal business transaction, [ii] rental or lease of immovable property, [iii] transaction relating to assets or services, [iv] granting or receipt of financial assistance through receiving or granting a loan, [v] guarantee, [vi] providing assets as collateral, and [vii] any other similar action, which make the applicant or its counterparty being subject to indebtedness payable to the other party in the amount of 3% or more of the net tangible assets of the applicant or 20 million baht or more, whichever is lower. In this regard, the amount of such indebtedness

shall be calculated according to the method for calculation of value of ***related party transactions*** under the *Notification of the Capital Market Supervisory Board concerning Rules on Related Party Transactions, mutatis mutandis*, nevertheless the consideration of such indebtedness shall include indebtedness occurred during the period of 1 year prior to the date on which the ***business relationship*** with the person commenced;

(5) neither being nor having been an auditor of [i] the applicant and [ii] its ***parent company, subsidiary company, associated company, major shareholder*** or ***controlling person***, and not being a ***significant shareholder, controlling person, or partner*** of an audit firm which employs the auditor of [i] the applicant and [ii] its ***parent company, subsidiary company, associated company, major shareholder*** or ***controlling person***.

In this regard, the foregoing prohibition does not apply to a case of which the relation thereof has ended not less than 2 years prior to the date of submitting an application [under Clause 12] to the SEC Office;

(6) neither being nor having been a provider of any professional services including those as legal counsel or financial advisor who receives service fees more than 2 million baht per year from the applicant's ***parent company, subsidiary company, associated company, major shareholder*** or ***controlling person***, and not being a ***significant shareholder, controlling person*** or ***partner*** of the provider of professional services thereof. In this regard, the foregoing prohibition does not apply to a case [i] of which relation thereof has ended not less than 2 years prior to the date of submitting an application [under Clause 12] to the SEC Office or [ii] being an exemption as prescribed in Clause 31;

(7) not being a director nominated for the benefit of [i] directors of the applicant, [ii] ***major shareholder*** or [iii] shareholder who is the ***connected person*** of the ***major shareholder***;

(8) [i] not undertaking any business in the same nature and in competition against the business of the applicant or its ***subsidiary company*** or [ii] not being a significant partner in a partnership or not being an ***executive director***, casual worker, employee, advisor receiving salary or not holding shares more than 1% of the total number of voting rights of any other company, which the partnership or company undertake business in the same nature and in competition against the business of the applicant or its ***subsidiary company***;

(9) not having any other characteristic which cause inability to express independent opinions relating to the applicant's business operations.

After being appointed as an independent director with the qualifications in conformity to sub clause (1) to (9) of the first paragraph, the independent director may be

assigned by the board of directors to take part in the business decision, in the form of collective decision, of [i] the applicant and [ii] its *parent company, subsidiary company, associated company, same level subsidiary company, major shareholder* or *controlling person*.

For the purpose of sub clause (5) and (6) of the first paragraph, the term “*partner*” means a person assigned by an audit firm or a provider of professional service to sign on the audit report or the professional report, as the case may be, on behalf of such juristic person.

Clause 31 In case a person appointed as an independent director has or used to have a *business relationship* or provide professional services exceeding the value as specified in Clause 30(4) or (6), the applicant would be exempted from such prohibition only if the applicant has provided the opinion of the company’s board of directors indicating that the appointment of such person does not affect performing duty and giving independent opinions. Additionally, the following information shall be disclosed in the calling notice of the shareholders’ meeting under the agenda for the appointment of independent directors:

- (1) the *business relationship* or professional service which makes such person disqualification from the prescribed rules [under Clause 30(4) or (6)];
- (2) the reason and necessity for maintaining or appointing such person as the independent director;
- (3) the opinion of the applicant’s board of directors for proposing the appointment of such person as the independent director.

Clause 32 An applicant shall provide at least 3 persons to be audit committee, which conforms to the following rules:

- (1) being appointed by the board of directors or the shareholders’ meeting of an applicant;
- (2) being an independent director pursuant to Clause 30 and:
 - (a) not being a director assigned by the board of directors to take part in the business decision of [i] the applicant and [ii] its *parent company, subsidiary company, associated company, same level subsidiary company, major shareholder* or *controlling person*;
 - (b) not being a director of the *parent company, subsidiary company* or *same level subsidiary company*, which those companies are listed companies;

(3) imposing the duties of them in conformity to the duties as those prescribed in the *Regulation of the Stock Exchange of Thailand concerning the Qualifications and Scope of Work of the Audit Committee*;

(4) having sufficient knowledge and experience to perform duties as audit committee member. In this regard, at least 1 member of the audit committee shall have sufficient knowledge and experience to audit the reliability of financial statements.

Clause 33 An applicant shall provide a system for preparing and keeping the evidentiary documentation by complying with the following rules:

(1) appointing a person responsible for the following matters:

(a) preparing and keeping the following documents:

1. a register of directors;
2. a calling notice of the directors' meeting, minutes of the meeting thereof and an annual report;
3. a calling notice of the shareholders' meeting and minutes of the meeting thereof;

(b) keeping a report on relevant interest of any director, an *executive* and related person of those persons as stipulated by the Notification of the SEC Office;

(c) performing any other act under the same scope of a company secretary's duties as specified by the Notification of the Capital Market Supervisory Board;

(2) having a mechanism which ensures that the person under sub clause (1) shall perform his duty with responsibility, due care and loyalty, and shall comply with all laws, the objectives, the articles of association, the resolutions of the board of directors and the resolutions of the shareholders' meeting;

(3) arranging a system for safekeeping of evidentiary documentation relating to the disclosure of the following information, including for monitoring the safekeeping of such documents to be accurate, complete and verifiable. In this regard, the safekeeping of the documentation shall be kept not less than 5 years as from the date of preparing such documentation:

(a) the information in support of seeking a resolution of the shareholders' meeting;

(b) financial statement, reports relating to the financial condition and the business operation, or any other report required to be disclosed under Section 56, Section 57, Section 58 or Section 199 [of the *Securities and Exchange Act B.E. 2535 (1992)*];

(c) the opinion of the applicant when a person makes a general tender offer to purchase shares from its shareholders;

(d) providing information or any other report relating to the business of the applicant prepared by itself for the purpose of disclosure to shareholders or the public as stipulated by the Notification of the SEC Office.

Division 4

Provisions relating to the disclosure of information

Clause 34 There shall be no reasonable suspicion demonstrating that:

(1) the information disclosed [by an applicant] to the public [i] is incomplete or inadequate for investors to make a decision to invest or [ii] contains any misleading statement;

(2) the applicant has an insufficient system to continuously and reliably prepare and disclose the information in accordance with prescribed rules.

Clause 35 A financial statement of an applicant, a *consolidated financial statement* for the most recent fiscal year, and the latest quarterly financial statement having been prepared prior to submitting an application [under Clause 12] shall be accurate, reliable and in accordance with the following rules:

(1) being prepared in compliance with the following financial reporting standards or any other reporting standard rendered waiver by the SEC Office:

(a) Thai Financial Reporting Standards and the rule for preparation of such financial statement as issued by virtue of Section 56 [of *the Securities and Exchange Commission B.E. 2535 (1992)*];

(b) International Financial Reporting Standards (IFRS);

(c) financial reporting standard recognized or specified by foreign regulator. In this case, the reconciliation to IFRS shall be prepared and disclosed;

(2) the audit report shall be affixed by the signature of an auditor to demonstrate that it was audited (in case of the financial statement for fiscal year) or reviewed (in case of the quarterly financial statement). In this regard, such auditor shall be:

(a) an [Thai] auditor whose name appears in the SEC Office's approved list under the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Auditors in Capital Market*. In this regard, in case the auditor is not a **local auditor**, such auditor shall comply with the following rules:

1. the financial statement shall be audited or reviewed, as the case may be, by a **local auditor** under the audit firm which is the member in the same accounting networks as the audit firm of the [Thai] auditor, and;

2. both of audit firms under sub clause 1. shall be a full member of the same accounting network;

(b) a foreign auditor approved by the SEC Office under the *Notification of the Office of the Securities and Exchange Commission relevant to the Approval of Foreign Auditor* who has any of the following characteristics:

1. being the auditor under the regulator who has the same supervisory standard of auditor as Thai standard, and who has no reasonable grounds to suspect about inability to provide an assistance to the SEC Office in inspection and supplying information relating to breaching or failing to comply with any provision on auditing account under Law on the Securities and Exchange⁵ or rules issued by virtue of such law;

2. being any other foreign auditor as stated in sub clause 1. whose name appears in the SEC Office's approved list under such Notification;

(3) the audit report under sub clause (2) shall not be illustrative meaning that:

(a) the preparation and the disclosure of information in the financial statement is not in compliance with the financial reporting standards obliged to use in preparation for such financial statement;

(b) the auditor is limited its scope of the auditing or reviewing, as the case may be, by any acts or failure to act of the applicant or directors or **executives** of the applicant.

The applicant shall proceed to have the financial information and other information of its **subsidiary company** in order that such applicant would be able to prepare a **consolidated financial statement** in accordance with financial reporting standards under sub clause (1) of the first paragraph.

⁵ Law on Securities and Exchange means The *Securities and Exchange Act B.E. 2535 (1992)*.

Division 5**Provision relating to financial advisor**

Clause 36 An applicant shall demonstrate that there is an agreement with the financial advisor, who jointly prepared an application, appointed to be responsible for the following duties for 3 consecutive years as from the effective date of the **registration statement** and draft prospectus. In this regard, such agreement shall not be specified the termination clauses in the way that the applicant or the financial advisor will use that clause to avoid their duties:

(1) elucidate the information [to the SEC Office] when circumstances as prescribed in Clause 21(2) (3) and (4) of the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Financial Advisor and Scope of Operating* have occurred;

(2) monitor, supervise and recommend the applicant to comply with the requirements after obtaining an approval, specially the following duties:

(a) prepare and submit the annual updated information statement and any other material information of a **foreign company**;

(b) comply with rules under Section 57 and Section 58 [of the *Securities and Exchange Act B.E. 2535 (1992)*];

(c) perform in accordance with the [subsequent] conditions after obtaining an approval as prescribed in sub clause (1) and (2) of the second paragraph of Clause 54.

The SEC Office is empowered to render totally or partly waiver in compliance with the rules under the first paragraph. In this regard, the SEC Office may adjure other conditions in lieu of the compliance of such waived rules.

Clause 37 The provision as prescribed in Clause 36 shall not be applicable to an applicant who meets any of the following characteristics:

(1) being a **listed company**;

(2) being a **foreign company** of which shares are held by **Thai person** in the amount of more than 50% of the total number of voting rights. In this regard, such amount shall be included the amount of the shares held by one or more of the shareholders who have the characteristics as prescribed in sub clause (2) of the second paragraph;

(3) being a *foreign company* of which shares are held by *Thai person* in the amount of [below 50% but] not less than 40% of the total number of voting rights in case of the limitation of other laws or conditions owing to a joint venture with the government sector. Additionally, the shares held by one or more of the shareholders as prescribed in sub clause (2) of the second paragraph shall be included in the amount thereof.

The amount of shares held by *Thai person* under sub clause (2) and (3) of the first paragraph shall be considered only *Thai person* who:

(1) holds shares in the amount of more than 10% of the total number of voting rights of the *foreign company* [or];

(2) has substantially participatory *de facto* management of the *foreign company*.

Division 6

Additional provisions in case of an applicant being a holding company

Clause 38 In case an applicant is a holding company, it shall demonstrate additional characteristics as follows:

(1) it has one or more core businesses operated by one or more companies which have qualifications as prescribed in Clause 40;

(2) integrative size of all companies operating core business and having qualifications as prescribed in Clause 40 shall not be less than 75% of the applicant's size. Additionally, the size of a *subsidiary company* as prescribed in Clause 40(1) or of the company as prescribed in Clause 40(2) shall not be less than 25% of the applicant's size;

(3) applicant's operation shall not be the manner of investment management business and shall not have any demeanors indicating that the applicant's operation having the objective to make return of shareholders' investment in the similar manner with the investment management company, except the investment in other companies, besides the company operating core business as prescribed in Clause 40, in aggregate of the size of all such other companies not exceeding 25% of the applicant's size;

(4) the applicant has mechanism for being able to control the management and being responsible for the operation of the *subsidiary company* under Clause 40(1) as if it is a operating unit of the applicant. In addition, there shall be the measure in compliance with the rule as prescribed in Clause 41 to follow up management of such company in order to protect interests of applicant's investment;

(5) the *subsidiary company* under Clause 40(1) or the company under Clause 40(2), as the case may be, shall possess the same qualifications as the applicant as prescribed in Clause 14(1) and comply with the rules under Division 1 to Division 4 of this Chapter except:

(a) the rule on local representative as described by Clause 23 [under Division 2];

(b) the rules regarding directors and structure of directors and management as described by Clause 28, Clause 29, Clause 30, Clause 31 and Clause 32 [under Division 3];

(c) the rule on safekeeping of evidentiary documentation as described by Clause 33 [under Division 3];

(d) the rule on financial statement as described by the first paragraph of Clause 35 [under Division 4], nevertheless [such *subsidiary company*] shall comply with the rules as prescribed in Clause 39 instead;

(e) [the rule on assistance of inspection and providing information as described by] Clause 17 [under Division 1], in case such *subsidiary company* is established under the law of *CLMV countries* and the applicant falls within any of the followings:

1. being the *foreign company* of which shares are held by *Thai person* altogether in the amount of more than 50% of the total number of voting rights. In this regard, such amount shall be included the amount of the shares held by one or more of the shareholders who have the characteristics as prescribed in sub clause 2. of the second paragraph;

2. being the *foreign company* of which shares are held by *Thai person* altogether [lower than 50% but] not less than 40% of the total number of voting rights only when there is [i] restriction of other laws or [ii] conditions owing to a joint venture with the government sector, which causes the *foreign company* unable to comply with sub clause 1. Additionally, one or more of the shareholders as prescribed in sub clause 2. of the second paragraph shall be included in the amount thereof;

The amount of shareholding under sub clause 1. and 2. of the first paragraph shall be considered only the shareholders:

1. who hold shares in the amount of more than 10% of the total voting rights of the *foreign company* [or];
2. have substantially participatory *de facto* management of the *foreign company*;

(6) in case the *subsidiary company* under Clause 40(1) or the company under Clause 40(2) is established under foreign law, at least 1 director of such company shall have a residence in the Kingdom of Thailand.

The consideration of the size of the applicant and size of the company under sub clause (2) and (3) of the first paragraph shall comply with the *Notification of the Office of the Securities and Exchange Commission concerning Consideration on Size of Holding Company Comparable to the Size of Other Companies in Its Group for the Purpose of Offering for Sale of Newly Issued Shares of the Holding Company, mutatis mutandis.*

Clause 39 The financial statement of the most recent fiscal year and the latest quarterly financial statement of the *subsidiary company* under Clause 40(1) and the company under Clause 40(2) as of the date of submitting the application shall be reviewed or audited, as the case may be, by the following person:

(1) an auditor of an applicant unless such auditor is unable to audit according to the law or rules of the country where the *subsidiary company* under Clause 40(1) or the company under Clause 40(2) is established;

(2) a *local auditor* who is employed by an [local] audit firm which is the member in the same accounting network as the audit firm of the auditor of the applicant. In this regard, both of audit firm shall be a full member of the same accounting network.

The auditor of the applicant under the first paragraph means the auditor who affixed the signature on audited or reviewed financial statement of the applicant as prescribed in Clause 35(2).

Clause 40 A company deemed to be the company operating core business for the applicant as prescribed in sub clause (1) of the first paragraph of Clause 38 shall be:

- (1) a *subsidiary company* of the applicant;
- (2) a company of which the applicant is unable to hold shares up to the proportion to become the *subsidiary company* under sub clause (1) due to the limitation of other laws in case of entering into a joint venture with the government sector, but

the applicant shall hold shares of such company no less than 40% of the total number of voting rights and shall demonstrate that it takes part in the management at least according to its shareholding proportion in such company;

(3) an *associated company* which the applicant:

(a) holds shares more than 25% of the total number of voting rights of such company;

(b) holds shares in the amount of 20% or more, but not more than 25% of the total number of voting rights of such company and the applicant demonstrates that it has participated in decision making in material matters to such company in the same manner as shareholding in the proportion more than 25% of the total number of voting rights;

(c) is going to hold shares of such company more than 25% of the total number of voting rights after the applicant obtains an approval [from the SEC Office] to offer for sale of its newly issued shares.

Clause 41 An applicant shall demonstrate that it has a mechanism to control a *subsidiary company* under Clause 40(1) at least the following requirements:

(1) the applicant has appointed persons, at least in proportional number of its shareholding, being directors or *executives* of the *subsidiary company*. In this regard, the applicant shall have internal rules specifying that the appointment thereof shall be subject to resolution of board of directors of the applicant;

(2) there are specified scope of duty and responsibility of directors or *executives* under sub clause (1) which includes:

(a) clearly specifying [i] scope of authority to exercise their discretion and [ii] the significant issues obligating them to ask for decision making from the applicant's board of directors before they will give their votes through the *subsidiary company's* board of director meeting;

(b) their duties to supervise the *subsidiary company* for disclosure of complete and accurate information relating to [i] financial and non-financial information, [ii] *related party transaction* and [iii] acquisition or disposal of material assets;

(c) duty to monitor other directors and *executives* of the *subsidiary company* to perform in compliance with duties and responsibilities as specified by laws;

(3) there is a supervisory mechanism that results [i] the execution of transaction between the *subsidiary company* and *related person*, [ii] acquisition or disposal of [*subsidiary company's*] assets or [iii] the execution of any other material transaction of the *subsidiary company* permitted by the resolution of applicant's meeting of board of

directors or of shareholders before entering into those transactions thereof. In this regard, such transaction shall be considered characteristics and amount of size for such permission in similar manner as the ones applicable to the applicant when it is required to obtain an approval from the resolution of its board of director or shareholder meeting.

The rules under sub clause (1) and (2) of the first paragraph are applicable to the company operating core business as prescribed in Clause 40(2) and (3), *mutatis mutandis*.

Clause 42 In case the size of a *subsidiary company* as prescribed in Clause 40(1) or a company as prescribed in Clause 40(2) is insignificant to the applicant's size, such company would be exempted from complying with the following rules:

- (1) the laws and regulations of foreign jurisdiction being comparable to *Thai company* as prescribed in Clause 16;
- (2) auditing or reviewing of the financial statement as prescribed in Clause 39.

Division 7

Additional provision in case of an applicant being a listed company

Clause 43 A resolution of shareholders which passed an offering for sale of newly issued shares as prescribed in Clause 14(2) shall conform to the following additional rules:

- (1) an agenda of shareholders' meeting shall be proposed by the applicant itself;
- (2) the necessary information for supporting the consideration to pass the resolution under sub clause (1) shall be delivered together with the calling notice of the shareholders' meeting. In this regard, such information shall be complete, accurate and sufficient for decision-making by shareholders.

Clause 44 An applicant shall not [i] fail to submit its financial statements or reports relating to financial and non-financial information to the SEC Office or the Stock Exchange of Thailand under Section 56 [of the *Securities and Exchange Act B.E. 2535 (1992)*] or Section 199 in conjunction with Section 56 [of the *Securities and Exchange Act B.E. 2535 (1992)*], as the case may be, or [ii] violate or fail to comply with the rules relating to preparation of financial statements or reports relating to financial and non-financial

information in material aspect; or [iii] violate or fail to comply with the rules relating to reports made to the SEC Office or the Stock Exchange of Thailand under Section 57 [of the *Securities and Exchange Act B.E. 2535 (1992)*] or Section 199 in conjunction with Section 57 [of the *Securities and Exchange Act B.E. 2535 (1992)*], as the case may be, or [iv] be interim of compliance with the order of the SEC Office or the Stock Exchange of Thailand under Section 58 [of the *Securities and Exchange Act B.E. 2535 (1992)*] or Section 199 in conjunction with Section 58 [of the *Securities and Exchange Act B.E. 2535 (1992)*], as the case may be, unless a waiver is rendered by the SEC Office.

Clause 45 As a *listed company*, the applicant shall not have any demeanor indicating a lack of appropriateness to be *listed company* in material aspect, for instance, [i] operating business in the manner of opaqueness or not providing any channel for shareholders to inspect the company or [ii] neglecting or failing to perform in accordance with publicly published policy and guideline of the SEC Office.

Clause 46 In case an applicant wishes to make an *offering new shares at lower market price* to specific placement, the following criteria shall be complied with, unless a waiver is rendered by the SEC Office by reason of necessity and appropriateness:

(1) in calling a shareholders' meeting to obtain a resolution for such offering, a calling notice of the shareholders' meeting shall be delivered to applicant's shareholders in advance at least 14 days prior to the meeting date;

(2) the calling notice under sub clause (1) shall contain the material information for the decision-making by shareholders and shall have at least the following particulars:

(a) the objective of an *offering new shares at lower market price*;

(b) the details of amount and offering price of newly issued shares.

In this regard, the offering price thereof shall be a fixed price, or otherwise can be indicated a certainly maximum discount rate;

(c) the market price used for making comparison with the offering price, including the calculation method;

(d) in case of proposing the offering price in term of a fixed price, the group of potential buyer of the newly issued share shall be also indicated;

(e) the effects on shareholders as a result of the *offering new shares at lower market price* shall be clarified by indicating at least price dilution, profit sharing dilution, and control dilution;

(f) the rights of shareholders to object the *offering new shares at lower market price* under sub clause (4);

(g) an opinion of the applicant's board of directors stating [i] the necessity for the *offering new shares at lower market price*, with an explanation on the value of the benefits gained from the offering thereof comparing to the lost spread between the offering price and the market price, [ii] the suitability and reason for the use of such selective market price and [iii] the determination of such offering price;

(h) any other information specified by the Notification of the SEC Office;

(3) a proxy form shall be submitted together with a calling notice of the shareholders' meeting, and shall indicate details of at least 1 independent director whom may be appointed as proxy of shareholders being unable to attend the meeting and cast their votes by themselves. In case such independent director may be allocated the newly issued shares asked for the shareholders' resolution thereof, the special interest of such independent director shall also be declared in the proxy form;

(4) the resolution of the shareholders for the *offering new shares at lower market price* shall be passed not less than three fourth of the total voting rights of shareholders who attend the meeting, without objecting vote 10% or more of the total voting rights of attending shareholders.

Clause 47 In case an applicant is a holding company, the applicant shall demonstrate that its management and the mechanism for controlling and monitoring the operation of core business company as described in Clause 40 would be able to protect the benefit of the applicant's investment sufficiently and efficiently. In addition, the applicant shall comply with the following rules:

(1) its shareholding in other companies shall not be the manner of investment management business, and it does not appear that the applicant's operation, the management of a director and an *executive*, and its managerial policy disclosed to public is on the purpose to make return of investment in the similar manner with the investment management business, except the investment in other companies, besides the core business companies as prescribed in Clause 40, which is qualified according to the rule under sub clause (2);

(2) the proportion of the exempted investment in other companies under sub clause (1) in aggregate shall not exceed 25% of the applicant's size, excluding the amount of the following investment:

(a) the investment of the *subsidiary company* as prescribed in Clause 40(1), being *financial institution business*, which invests in securities issued by other companies of which business are not operating core business [for the applicant];

(b) the investment in other companies which is going to be longer than 1 year, to the extent that the investment is identical business as core business [for the applicant] as prescribed in Clause 40;

(c) the investment resulted from exercising right offering issue [by the applicant];

(d) the increasing value of portfolio investment without additional investment, for instance, the increase of market value or the reduction of asset value of the company operating core business [for the applicant] as prescribed in Clause 40.

Clause 48 An applicant as prescribed in Clause 47 is exempted from complying the following rules:

(1) the size of a company operating core business [for the applicant] as prescribed in Clause 38(2);

(2) the applicant's operation as prescribed in Clause 38(3);

(3) the qualification under Division 2 to Division 4 of the *subsidiary company* as prescribed in Clause 40(1) or of the company as prescribed in Clause 40(2);

(4) the operation of core business by an *associated company* as prescribed in Clause 40(3);

(5) the mechanism for controlling the *associated company* as prescribed in the second paragraph of Clause 41.

Chapter 3

Conditions to comply after obtaining an approval

Clause 49 An approved person under Chapter 2 of this Part shall comply with the following conditions:

(1) conditions required to perform before or at the time of the offering period under Division 1;

(2) conditions relating to corporate governance under Division 2;

(3) other conditions required to perform after offering for sale [of shares] under Division 3.

Division 1
Conditions required to perform before or
at the time of the offering period

Clause 50 As from the effective date of the *registration statement* and draft prospectus, if an approved person wishes to make an advertisement for offer for sale of its shares by a method other than a distribution of the prospectus, the advertising:

(1) shall not contain false, overstated, distorted, concealed or misleading information;

(2) shall contain material information not different from information presented in the *registration statement* and draft prospectus submitted to the SEC Office under Part 5 of this Notification;

In case the approved person has not complied with the rules under the first paragraph, the SEC Office may have one or more of the following orders to the approved person:

(1) wholly or partly cease the advertisement or sale promotion;

(2) amend the information or the statement in the advertisement or the sale promotion;

(3) make elucidation to investors in order that the investors will receive complete, accurate or not misleading information;

(4) act or refrain from acting within the specified period in order to provide period for investors to make a decision on the information which is complete, accurate, or not misleading.

Clause 51 In advertising for solicitation to buy shares by publications, an approved person shall comply with Section 80 [of the *Securities and Exchange Act B.E. 2535 (1992)*] and provide the briefly information relating to limitation and risk issues as prescribed in Clause 75(1) (a) (b) (c) (d) and (g) in the publications.

Clause 52 An approved person shall:

(1) not set the price of any portion of shares offered for sale to the public higher than allocated to specific persons, irrespective of whether or not the allocation is made during the same period of or within 90 days prior to the public offering unless allocated portion to such specific persons meets any of the following characteristics:

(a) it is an offer for sale to directors and employees of the approved person or of its *subsidiary company* as approved by the board of directors or the shareholders' meeting;

(b) it is necessary and appropriate ground rendered a waiver by the SEC Office;

(2) an offer for sale of shares shall be completed within 6 months as from the date on which the SEC Office has notified granting an approval. In case the approved person fails to complete within such period and wishes to continue an offer for sale, such approved person shall request for an extension of the offering period in writing to the SEC Office at least 30 days prior to the expired period of 6 months. In connection with this, the rationale for such request together with the information relating to material changes to the characteristics in accordance with Chapter 2 (if any) shall be provided. In this regard, the SEC Office is empowered to granting an extension of the offering period but not exceeding 12 months as from the date on which the SEC Office has notified granting the first approval;

(3) wholly cancel its offer for sale of shares and return money to the subscribers, in case the approved person is unable to [i] sale its shares until reach of the required minimum amount or [ii] comply with any other listing requirement, as prescribed by the Stock Exchange of Thailand;

(4) not call a shareholders' meeting to obtain any resolution which may affect new shareholders from the date on which the SEC Office has notified granting the approval thereof until the date prior to the registration of new paid-up capital of the sold shares, unless a waiver is rendered by the SEC Office due to necessity and appropriateness.

Division 2

Conditions relating to corporate governance

Clause 53 For the purpose of having ongoing corporate governance and any other protection of shareholders comparable to the criteria forced upon other companies, which have offered for sale of newly issued shares to the public in the Kingdom of Thailand, an approved person shall comply with the conditions relating to this Division except the following cases:

(1) the approved person subjects to the country where its laws and regulations relating to the issue under consideration are comparable to the ones forced upon *Thai company*;

(2) the approved person is rendered a waiver as prescribed in Clause 58.

Clause 54 The approved person shall provide the mechanism to ensure that the corporate governance shall be conformed to the following criteria:

(1) a director and an *executive* [i] fully perform their duties with responsibility, due care and loyalty, and [ii] shall comply with all [relevant] laws, the objectives of company, the articles of association, and the resolutions of the board of directors and shareholders;

(2) it provides sufficient measures in order to assist shareholders to follow up, acknowledge and make a decision relating to material operation of the company.

The mechanism provided by the approved person under the first paragraph shall also support the following operations [of the company]:

(1) an execution of a *related party transaction*;

(2) an acquisition and disposition of [material] assets or any other material transaction of the company;

(3) procedure to acquire a report on a director and an *executive's* interest or their related person's interest [which is in connection with the company];

(4) preparing an opinion on a takeover bidding for disclosure to all shareholders;

(5) providing information to shareholders in advance in order to support the shareholders to make a decision to vote at shareholders' meeting;

For the purpose of clarity and practicality, the SEC Office is empowered to issue the regulations in details of the approved person's performance in accordance with the first paragraph. In this regard, the SEC Office shall take into account the standard of the operation of *Thai company* and the performance of the director and the *executive* of *Thai company*.

Clause 55 An approved person shall maintain the following qualifications:

(1) having a local representative in the Kingdom of Thailand as prescribed in Clause 23;

(2) arranging a system for preparing and keeping evidentiary documentation in compliance with rules as prescribed in Clause 33. In this regard, the approved person shall disclose continuously a person's name who has duty to prepare and keep the documentation.

Clause 56 An approved person shall perform the following criteria to make its director, *executive* and *controlling person*, as the case may be, have specified characteristics:

(1) monitoring in order to acknowledge unqualified characteristics of the director, the *executive*, and the *controlling person* as prescribed in Clause 27. In case there is a certain fact demonstrating that such persons have the unqualified characteristics, the approved person shall proceed any necessary as authorized by law to cease such person's duty;

(2) providing any person not having unqualified characteristics subject to Clause 27 and having qualification subject to Clause 28 to possess the position of director and *executive* at all time and proceeding any necessary as authorized by law to have a new director or *executive* whose characteristics are in compliance with Clause 27 and Clause 28 when it has to change former director or *executive*.

Clause 57 In arranging a shareholders' meeting, an approved person shall provide [i] a meeting venue or [ii] any other channel and means so that a shareholder in the Kingdom of Thailand would be able to [i] express his opinion and communicate with other shareholders [in other jurisdictions] and [ii] vote conveniently. In this regard, the channel and means thereof shall be subject to laws and regulations of the foreign jurisdiction applicable to the approved person.

Clause 58 In case an approved person falls within any of the following characteristics, the SEC Office may wholly or partly render a waiver to the approved person not to comply with the conditions [as specified under this Division] in general or case by case basis:

(1) the approved person is regulated by the regulator of foreign capital market in the country of which the approved person's shares have been traded on the stock exchange;

(2) an approved person is unable to comply with the conditions in this Division as the result of the restriction under the laws or regulations of foreign jurisdiction applicable to the approved person;

(3) the duty of approved person to disclose financial and non-financial information has been ceased as stipulated in the [relevant] rule issued by virtue of Section 56 [of the *Securities and Exchange Act B.E. 2535 (1992)*].

In rendering the waiver under the first paragraph, the SEC Office may require the approved person to comply with other specified conditions. In this regard, the SEC Office shall take into account the following factors for rendering the waiver or specifying other conditions thereof:

(1) comparability of the laws and regulations of foreign jurisdiction including legal enforcement, relevant to the conditions being waived, to the laws or regulations of the Kingdom of Thailand;

(2) the issues concerning the affect of protection or rights of shareholders, for instance, the shareholders passing the resolution with no less than three-fourths of total voting rights of shareholders who attend the meeting for asking a waiver [from the SEC Office] for being relieved of the specified conditions [under this Division].

Clause 59 In case the factors for rendering a waiver have been changed significantly which may cause affect the shareholders of an approved person, after the approved person has obtained a waiver from the SEC Office under Clause 58, the SEC Office may wholly or partly revoke or amend such waiver.

Division3

Other conditions required to perform after offering for sale [of shares]

Clause 60 In case an approved person wishes to issue new tranche of securities or proceed any action which may affect price dilution, profit dilution or control dilution, the approved person shall obtain the resolution of the shareholder's meeting in such matters by complying with the following rules, unless a waiver is rendered by the SEC Office when necessary and appropriate:

(1) shareholders grant consent to issue new securities thereof with a vote not less than three-fourths of the total number of voting rights of the shareholders who attend the meeting;

(2) in case issuing such new securities is an *offering new shares at lower market price*, there shall be no objecting vote 10% or more of voting rights of attending shareholders.

The counting of number of votes under sub clause (1) and (2) of the first paragraph shall not include the vote of a person having special interest in such resolution regardless of his personal own interest or the interest of his *connected person*.

The provision under the first paragraph shall not be applicable to the offer for sale of newly issued securities in the manner of right offering issue.

Clause 61 During the period which an approved person is obliged to comply with the rules as stipulated by the Notification of Capital Market Supervisory Board issued by virtue of Section 56 [of the *Securities and Exchange Act B.E.2535 (1992)*], the approved person shall comply with its commitments given in the application or *the registration statement* and draft prospectus, and shall proceed everything that makes its *major shareholders, executives, and controlling persons* commit to comply with such commitments as well, unless otherwise resolved by a shareholders' meeting [as specified under sub clause 2].

The resolution of the shareholders meeting under the first paragraph shall be in conforming to the following rules:

- (1) the resolution of the shareholders' meeting has released the commitment with the votes not less than three-fourths of voting rights of attending shareholders;
- (2) there is no 10% or more of voting rights of attending shareholders opposing the resolution.

The counting of number of votes under sub clause (1) and (2) of the second paragraph shall not include the vote of a person having special interest in such resolution regardless of his personal own interest or the interest of his *connected person*.

Clause 62 In case an approved person has provided an agreement with a financial advisor as prescribed in Clause 36, and such financial advisor is unable to perform its duty in any cause during the period specified in the agreement, the approved person shall immediately arrange a new financial advisor whose name appears in the SEC Office's approved lists in order to perform duties as prescribed in Clause 36(1) and (2) instead of the previous financial advisor.

Clause 63 In case a financial advisor who jointly prepared an application and has continuous duties as specified by the *Notification of the Office of the Securities and Exchange Commission concerning Approval of Financial Advisor and Scope of Operating* wishes to receive or verify any information for the purpose of performing its duties as well as agreement as stipulated by this Notification, the approved person shall cooperate in providing

such information to the financial advisor during the period of its duties in accordance with the agreement thereof.

Clause 64 In case an approved person is a holding company, the approved person shall provide the mechanism to supervise its *subsidiary company* as prescribed in Clause 40(1) or the company as prescribed in Clause 40(2) to comply with the condition as prescribed in Clause 52(4) and Clause 61, *mutatis mutandis*.

Part 3

Public Offering for Sale of Newly Issued Shares of CLMV Company

Clause 65 Provisions under this Part shall be applicable to public offering for sale of newly issued shares of the following *CLMV company*:

(1) the *CLMV company* wishing to offer for sale of newly issued shares in the Kingdom of Thailand for registration as listed securities on the Stock Exchange of Thailand;

(2) the *CLMV company*, under sub clause (1) whose shares have been already registered as listed securities on the Stock Exchange of Thailand, wishing to raise the capital and offer for sale of newly issued shares in the Kingdom of Thailand again.

Clause 66 A public offering for sale of newly issued shares of the *CLMV company* shall be in accordance with submission of an application of Chapter 1 and rules for an approval of Chapter 2 under Part 2, excluding some rules in exchange for some conditions as follow:

(1) in case an applicant falls within any of the following characteristics, Clause 17 is inapplicable to it:

(a) the *CLMV company* of which shares held by *Thai person* in the amount of more than 50 % of the total voting rights, which such amount shall be held by shareholders having the characteristics as prescribed in sub clause (2) (b);

(b) the *CLMV company* of which shares held by *Thai person* in the amount of [below 50% but] not less than 40% of the total voting rights owing to the restriction of other laws or conditions of joint venture with the government sector. In this regard, one or more of the shareholders in such company shall be the shareholder having the characteristics as prescribed in sub clause (2) (b);

(2) the amount of shares held by *Thai person* shall be considered only to the following shareholders:

(a) a shareholder who holds shares in the amount of more than 10% of the total voting rights of the *CLMV company*;

(b) the shareholder who has partly or substantially managed *de facto* the *CLMV company*;

(3) Clause 36 regarding agreement appointing financial advisor is inapplicable to the following applicants:

(a) *listed company*;

(b) *CLMV company* having characteristics as prescribed in sub clause (1).

Clause 67 The *CLMV company* having obtained an approval under Clause 66 shall comply with conditions after obtaining an approval of Chapter 3 under Part 2 in this Notification.

For the purpose of performing under the first paragraph, the SEC Office is empowered as prescribed in Clause 58 and Clause 59, *mutatis mutandis*.

Part 4

The Submission of the Registration Statement and Draft Prospectus

Chapter 1

General provisions

Clause 68 Provisions in this Part shall be applicable to:

(1) an offer for sale of shares by a *foreign company* having obtained an approval in accordance with Part 2 or Part 3;

(2) an offer for sale of shares by shareholders, of the above-mentioned *foreign company* in sub clause (1), whose shares have been offered for sale together with an offer for sale of shares by the *foreign company* thereof;

(3) an offer for sale of shares by shareholders, of the above-mentioned *foreign company* in sub clause (1), without having exempted to submit the **registration statement** and draft prospectus as stipulated by the *Notification of the Securities and Exchange Commission concerning Exemption from Submitting Registration Statement for Offer for Sale of Shares Issued by the Foreign Company in case of Private Placement*.

Clause 69 An offer for sale of shares is allowed when [i] an offeror has already submitted the **registration statement** and draft of prospectus to the SEC Office and [ii] cooling – off period for such documents has elapsed.

Clause 70 In case an offeror wishes to offer for sale of remaining shares again after the period for previous offering as specified in the **registration statement** has come to the end, the offeror shall submit a new **registration statement** and the draft prospectus to the SEC Office.

Chapter2

Procedures and fee for submission of the registration statement and draft prospectus

Clause 71 An offeror shall submit the **registration statement** as prescribed in Chapter 3 and draft prospectus according to the form under section 72 [of the *Securities and Exchange Act B.E.2535 (1992)*] together with the evidentiary documentation as specified on the website of the SEC Office. In this regard, the methods for submission shall be as follows:

- (1) 5 copies of the **registration statement** and draft of prospectus in the printed form;
- (2) electronic information through the transmission system as specified by the SEC Office.

The information submitted to the SEC Office both in forms of printed document and electronic data shall be identical.

Clause 72 An offeror shall pay the fee for submitting the **registration statement** in accordance with the rules and procedures as specified by the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Submitting Registration Statement, Permission by Registration and All Applications for Obtaining Approval*.

Chapter3

Form and information in the registration statement

Clause 73 The *registration statement* submitted to the SEC Office shall:

(1) not contain any information that is false or may be misleading, and does not omit any material statement which should have been disclosed;

(2) have information as prescribed in Section 69(1) to (10) [of the *Securities and Exchange Act B.E.2535(1992)*];

(3) have additional information as specified under this Chapter.

The financial advisor whose name appears in the SEC Office's approved list shall be appointed to jointly [i] prepare the *registration statement* and draft prospectus submitted to the SEC Office under the first paragraph and [ii] certify the accuracy and completeness of the information therein.

Clause 74 The *registration statement* submitted to the SEC Office shall be provided in 69-1-F form attached to this Notification.

Clause 75 The *registration statement* submitted to the SEC Office as prescribed in Clause 74 shall at least contain the following additional information:

(1) information relating to restrictions and risks in the following matters:

(a) a reminder that as a shareholder of a *foreign company*, therefore the rights and protections would be according to the laws and regulations of the jurisdiction in which the *foreign company* is established, so investors [in Thai jurisdiction] are strongly encouraged to keep acknowledging and updating on such laws and regulations. In this regard, the reminder shall be obviously and clearly stated with bold character on the cover page of the *registration statement*;

(b) the way to take legal action against the *foreign company* or the offeror because they are in overseas jurisdiction. In this regard, the jurisdiction of the court where legal proceedings are allowed to be trial thereof shall also be specified;

(c) effect on shareholders of the *foreign company* in case law of jurisdiction where such company has involved has restriction on remittance (if any);

(d) restriction on purchasing shares of the *foreign company*, in case the value of shares to be allocated to investors in the Kingdom of Thailand exceeds the remaining quota as specified by the Bank of Thailand for foreign exchange control over capital market transactions;

(e) a warning statement to ensure that investors are acknowledged of relevant facts and possible risk of decreasing price of shares when such shares are traded on the Stock Exchange of Thailand in case of:

1. offer for sale of shares for the purpose of primarily listed shares on the Exchange thereof and;

2. *the foreign company* has offered for sale of shares to any person at a price lower than the offered price stated in the *registration statement*. In this regard such offer has occurred during the 6 months prior to the offering under the *registration statement* and the aggregate number of shares were offered during such period are more than 10% of the total number of shares offered under the *registration statement*;

(f) a statement clearly specified that rights of the shareholders and the protection relating to corporate matter are not enforced by Thai law, nevertheless, in order to protect the shareholders, the *Notification of Capital Market Supervisory Board concerning Provisions Relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange* compels the *foreign company* to comply with the corporate governance rules thereunder;

(g) any other restriction or risk which may affect the exercise of right or the investment decision of investors in materiality, for instance, restriction on giving proxy to vote, or restriction on delivery of share certificates because shares of the *foreign company* are in book-entry system (scripless);

(2) information relating to name and contact address of the contact person appointed by the *foreign company* as its representative in the Kingdom of Thailand, as well as the clearly stated power and duty of such representative;

(3) information relating to a personal responsible for preparing and safekeeping of company's documents under Clause 33(1) including name, qualifications and scope of work;

(4) clear statement relating to language being used in preparation for prospectus, financial statements, annual report, annual updated information statement, supplementary documents for shareholders' meeting, and any other information or report in relation to business prepared by the *foreign company* for disclosure to the public;

(5) clear statement specified that the *foreign company* has been passed preliminary consideration by the Stock Exchange of Thailand for first accepting its shares to be listed securities;

(6) comparison of the foreign laws and regulations relating to corporate governance and the protection of shareholders applicable to the *foreign company* and the ones applicable to Thai public limited company, as well as any mechanism provided to enhance the corporate governance and the protection of shareholders in the significant matters to correlate with the laws and regulations applicable to Thai public limited company (if any).

Clause 76 In case of revealing estimated value of any asset in *registration statement*, the appraisal value shall be prepared by properly qualified appraiser who has capability to assess the value of the asset approximately and impartially and is mutually selected by an applicant and its financial advisor. Specifically, the appraiser thereof shall be in accordance with the following characteristics:

(1) being a financial advisor or appraisal company in the capital market whose name appears in the SEC Office's approved list or being a specialist recognized by the SEC Office;

(2) in case of being a foreign appraiser, such person shall be:

(a) an appraiser whose name appears in the approved list of the authority or the regulator of the country where evaluated asset is located;

(b) in case the appraiser's name does not appear in the list under sub clause (1), such appraiser shall possess any of the following characteristic:

1. being a professional appraisal person whose works are recognized in the country where evaluated asset is located;

2. being an appraiser whose performance and operational systems comply with standards of professional appraisal practice;

3. being an appraiser who is a member of an international appraisal network.

Clause 77 In case an offeror has submitted the *registration statement* only provided in English version, but wishes to also distribute the information relating to offer for sale of shares in Thai version, the offeror shall provide such information in Thai version in the appendix attached to the *registration statement* and it shall be deemed that such information is one of an integral part of the *registration statement*.

Clause 78 The financial statement of a *foreign company* disclosed in the *registration statement* shall conform to the accounting standards as prescribed in Part 2 or Part 3, as the case may be.

Clause 79 Prior to the closing date of the offer for sale of shares, in case an offeror has disclosed any material information, which was not stated in the *registration statement* and prospectus, to any specific person for the purpose of analyzing the properness of investment in the offered shares or making a decision to invest in such shares, the offeror shall disclose such information in the *registration statement* and prospectus promptly but not later than the date when the *registration statement* has become effective, or within the next business day after the date of such disclosure having been made to any specific person in case the *registration statement* becomes effective or has already been effective.

Chapter 4

Certification of information

Clause 80 The *registration statement* submitted to the SEC Office shall be signed to certify the correctness and completeness of contained information by complying with the following rules:

(1) in case of offer for sale of newly issued shares by a *foreign company*, all directors and Chief Accounting Officer of a foreign company shall affix their signature together with the company's seal affixed thereto (if any);

(2) in case of offer for sale of existing shares by any shareholder, the affixed signature shall be the following persons:

(a) the shareholder itself. In this regard, in case such shareholder is a juristic person, it shall be an authorized person together with the company's seal affixed thereto (if any);

(b) all directors and Chief Accounting Officer of the issuer together with the company's seal affixed thereto (if any);

(3) an authorized person who has power to sign in the name of the financial advisor shall affix his signature together with the company's seal affixed thereto (if any).

Clause 81 Where there is a necessary or an appropriate cause that an authorized person required to sign his signature on behalf of a juristic person [in the *registration statement*] under Clause 80 is unable to autograph, such juristic person shall comply with the following rules unless obtain a waiver by the SEC Office:

(1) in case the cause of inability to sign signature is the result of unconsciousness or unable to control himself owing to physical or mental disorder, an offeror would be exempted from arranging such person to sign in the *registration statement*;

(2) in case the cause of inability to sign signature is the result of conditions other than sub clause (1), the offeror shall arrange such person to affix signature onto the *registration statement*, when the conditions extinguish, to make it come into effective in accordance with Clause 82.

Chapter 5

Effective date of registration statement and draft prospectus

Clause 82 Subject to Section 68 and 75 [of the *Securities and Exchange Commission B.E.2535 (1992)*], when an offeror has submitted the *registration statement* and draft prospectus to the SEC Office and paid fee for such submission, such *registration statement* and draft prospectus shall come into effective upon the lapse of the following periods whichever comes later. In this regard, such period shall not more than 45 days as from the date when the SEC Office received the complete *registration statement* and draft prospectus:

(1) 14 days as from the date when the SEC Office received the complete *registration statement* and draft prospectus;

(2) the date when the offeror completely states in the *registration statement* and draft prospectus about the underwriting information, which are the amount and price of shares being offered for sale, offering period, details on subscription, underwriting, allotment

and any other similar information including documents relevant to such information. In this regard, the period as from the date of submitting the *registration statement* with complete information of the other parts until the date of submitting those aforementioned information shall not be less than 14 days.

Notified this 23rd day of March 2015.

(Vorapol Socratyanurak)

Secretary-General

Office of the Securities and Exchange Commission

Chairman

Capital Market Supervisory Board

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