

TRANSLATED VERSION

As of March 23, 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. 5/2558

Re: Provisions relating to Offer for Sale of Shares

Issued by Foreign Company in the Manner of

Private Placement

By virtue of Section 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 Section 35 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:

The terms “*institutional investor*” and “*listed company*” 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.

“*mutual fund*” means any mutual fund established under the *Securities and Exchange Act B.E. 2535 (1992)*, or an investment scheme approved under the law on undertaking of finance business, securities business and credit foncier business¹, which is managed by a securities company licensed to undertake securities business in the category of mutual fund management.

“*management company*” means any securities company licensed to undertake securities business in the category of mutual fund management.

¹ The law on undertaking of finance business, securities business and credit foncier business means *The Undertaking of Finance Business, Securities Business and Credit Foncier Business Act B.E. 2522 (1979)* which is repealed and replaced by the *Financial Institution Business Act B.E. 2551 (2008)*

Clause 3 This Notification is applicable to an offer for sale of shares issued by a *foreign company* in the manner of private placement, unless otherwise stipulated by other specific regulations.

Chapter 1

Power of the SEC Office

Clause 4 In case there is any certain fact appeared to the SEC Office leading to the following suspicions, the SEC Office may reject the effectiveness of the offer for sale of newly issued shares in the manner of private placement as prescribed in Chapter 2 or suspend such offer for sale:

- (1) a *foreign company* defectively or inappropriately comply with the conditions after the approval or would be unable to comply with such conditions;
- (2) the investors may not receive the information which is material to make the decision of investment;
- (3) the offer for sale of newly issued shares has manners which may fall within the scope of avoiding other regulations issued under the *Securities and Exchange Act B.E. 2535 (1992)*.

Clause 5 In case of any of the following characteristics, the SEC Office would render a waiver on compliance with certain rules under this Notification for an offer for sale of shares according to Chapter 2:

- (1) there is clearly 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 Thai or foreign law, which constrain it from compliance with the rules or conditions to be waived;
- (3) an approved person 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 the appropriateness and the sufficiency of the information for supporting the investors to make decision for investing and measures for protecting the investors. In this regard, the SEC Office may determine an additional condition for the waived person to comply with.

Chapter 2

Offer for Sale of Newly Issued Shares in the Manner of Private Placement

Clause 6 An offer for sale of newly issued shares of a *foreign company* who complies with the following rules would be deemed to obtain an approval from the SEC Office:

- (1) the offer for sale of newly issued shares is in the manner of private placement as prescribed in Clause 7;
- (2) the offer for sale of such shares is legitimate to issue according to foreign laws and regulations of other jurisdiction applicable to the *foreign company*;
- (3) value of shares offering for sale is in the allotted quota provided by Bank of Thailand for controlling the execution of transaction in capital market relating to foreign currencies.

An approved person under this Chapter shall comply with conditions after obtaining an approval as prescribed in Chapter 3.

Clause 7 An offer for sale of newly issued shares in any of the following characteristics, shall be deemed the offer for sale thereof in the manner of private placement:

- (1) such offer made to selective investors in the number of not exceeding 50 investors during any rolling 12 month period;
- (2) such offer having aggregate value not exceeding 20 million baht during any rolling 12 month period. In this regard, the aggregate value of such shares shall be based on the offering price;
- (3) such offer made to the *institutional investors*.

The number of investors referred in sub clause (1) or the aggregate value of the offering referred in sub clause (2) of the first paragraph would exclude the offer made to the *institutional investors* referred in sub clause (3) of the first paragraph, regardless of such offering made simultaneously or at different time.

Clause 8 An offer for sale of newly issued shares made to any *mutual fund* which has been established as a tool for or has had investment in the manner of avoiding the rules of offering for sale of newly issued shares to the general public shall not be deemed the offer made to the *institutional investors* as prescribed in Clause 7(3).

Unless otherwise permitted by the SEC Office under the third paragraph, an offer for sale of newly issued shares to any *mutual fund* which has any of the following characteristics shall not be deemed the offer made to the *institutional investors* as prescribed in Clause 7(3):

- (1) a *mutual fund* which does not restrict its offer for sale of investment units solely to *institutional investors*;
- (2) a *mutual fund* of which investment in such shares is made pursuant to an agreement or a contract between an offeror and a *management company* without exercising discretion in making investment decision by *management company* itself which is contrary to normal management of other mutual funds;
- (3) a *mutual fund* investing in one of the following manners:
 - (a) offered shares of any company with value of each investment more than 50% of its net asset value;
 - (b) newly issued shares of any company more than 50% of the total value of each offering of the shares thereof.

In case an offeror wishes to make an offer for sale of newly issued shares to a *mutual fund* in the manners as prescribed in the second paragraph and wishes such offer treated as an offer for sale to *institutional investors*, the offeror shall submit an application together with explanatory statements and evidentiary documentation to the SEC Office for granting consent.

Chapter 3

Conditions after Obtaining an Approval

Clause 9 An approved person under Chapter 2 shall comply with the following conditions:

(1) the approved person is prohibited from advertising an offer for sale of newly issued shares to the public. Moreover, in case a distribution of documents relating to the offered or being offered shares is made, the approved person shall distribute such documents to selective persons or other persons as deemed necessary to ensure that such offering falls within the criteria as prescribed in sub clause (1), (2) or (3) of the first paragraph of Clause 7, and shall provide a statement referred in sub clause (2) in such documents. In this regard, in case there is an offer for sale of such shares simultaneously or in proximate period in any other country, such documents shall be contained information not less than information which has been disclosed in any other country;

(2) the approved person shall not sign to certify the accuracy of information in the *registration statement* and draft prospectus, submitted to the SEC Office by its shareholder, for an offer for sale of shares to the public, if there have been shares registered as paid up capital owing to being deemed to obtain the approval from the SEC Office within 2 years backward, except any of the following cases:

(a) the SEC Office has granted an approval to offer for sale of newly issued shares to the general public;

(b) the submitted *registration statement* thereof has been made for the purpose of registering shares of an approved person as listed securities on the Stock Exchange of Thailand;

(c) the approved person is a *listed company*.

(3) an offer for sale of shares by the approved person shall comply with the following rules:

(a) the approved person shall complete its offer for sale of shares within 1 year as from the date on which the shareholders have resolved to issue new shares;

(b) in case of the approved person being the *listed company*, the resolution of the shareholders' meeting as prescribed in sub clause (a) shall be in accordance with the following criteria:

1. an agenda of issuing new shares shall be proposed by the approved person itself;
2. the necessary information for supporting the consideration to have the resolution on agenda under sub clause 1. shall be delivered together with a written notice for calling the shareholders' meeting in advance. In this regard, such information shall be complete, accurate and sufficient.

Clause 10 Where the Stock Exchange of Thailand is a main exchange for trading shares of an approved person under Chapter 2 and it wishes to offer for sale of new shares at lower market price, the approved person shall comply with rules relating to an offering new shares at lower market price under the *Notification of the 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, mutatis mutandis.*

In case the approved person's shares are traded in many exchange, the deliberation of the main exchange under the first paragraph shall be in accordance with the *Notification of the Capital Market Supervisory Board concerning Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are Traded or Going to Be Traded in Foreign Exchange, mutatis mutandis.*

Clause 11 An approved person under Chapter 2 shall submit the evidentiary documentation to the SEC Office together with the reporting result of the sale. In this regard, the documentation thereof shall be in accordance with the guideline publicized on the electronic system as provided by the SEC Office.

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.