

UNOFFICIAL TRANSLATION

Codified up to No. 5
As of 28 September 2018

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 Securities and Exchange Commission

No. Sor Jor. 63/2558

Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange and Procedure for Filing of Application

By virtue of Paragraph 1 of Section 12 of *the Notification of the Capital Market Supervisory Board No. Tor Jor. 3/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange* dated 23 March 2015, the SEC Office hereby issues the following regulations:

Clause 1 *The Notification of the Office of the Securities and Exchange Commission No. Sor Jor. 8/2558 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange and Procedure for Filing of Application* dated 23 March 2015 shall be repealed.

Clause 2¹ The foreign company wishing to offer for sale of newly issued shares shall file the application form through the electronic system of the Stock Exchange of Thailand, which is set up for such matter, in accordance with Form 35-1-F as displayed in the electronic system together with the evidentiary documentation under Clause 3.

Clause 3 The evidentiary documentation shall include the following:

(1) a document specifying details regarding the foreign company wishing to offer for sale of newly issued shares. Such documents must have the same characteristics as the forms and items specified in the registration statement in accordance with the *Notification of the Capital Market Supervisory Board regarding Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange*;

In case where a foreign company files the registration statement and draft prospectus at the time of filing the application for approval, such registration statement submitted shall be regarded as the evidentiary document for the application filed by the company under Paragraph 1.

(2) documents specifying the details of directors, executives and controlling persons in the following matters:

(a) first name and last name (If the first name or last name has been changed, the former name or last name shall be specified.);

(b) identification number or passport number;

¹ Amended by the *Notification of the Securities and Exchange Commission No. Sor Jor. 63/2558 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded on Foreign Exchange and Procedure for Filing of Application (No. 2)* dated 10 February 2016 (effective on 1 March 2016).

- (c) position held as director or executive in other company;
- (3) a certified copy of the memorandum of association prepared in compliance with the laws of the country where the foreign company is established;
- (4) a copy of the letter certifying the establishment of the foreign company from a foreign regulator;
- (5) a copy of the article of association of the foreign company and all of its subsidiary companies certified by the foreign regulator;
- (6) a copy of a resolution of a shareholders' meeting approving share issuance;
- (7) a copy of a board of directors' resolution approving share issuance;
- (8) a copy of agreement authorizing other person an absolute power of management (if any);
- (9) a confirmation letter of the issuer's acknowledgement of the duties and responsibilities after the offer for sale of securities;
- (10) a confirmation letter of the directors and executives' acknowledgement of the duties and responsibilities to report securities holding under Section 59;
- (11) a letter of confirmation to perform duties of the financial advisor;
- (12) an opinion letter concerning related-party transaction from the audit committee;
- (13) a letter of certification from the independent directors regarding the understanding of the roles, duties and responsibilities as independent directors of a foreign company;
- (14) a letter of certification from the audit committee regarding the understanding of the roles, duties and responsibilities as audit committee in the foreign company and the ability to provide an independent opinion concerning the operation of the applicant;
- (14/1)³ letters of certification from the chief financial officer and the chief accountant regarding their qualifications in accordance with the *Notification of the Capital Market Supervisory Board regarding Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange*;
- (14/2)³ a copy of the minutes of the audit committee's meeting when the audit committee considers the following matters (if any):
- (a) whether the chief financial officer has work experience which is directly beneficial to the applicant's operation and the duration of such work is in accordance with the *Notification of the Capital Market Supervisory Board regarding Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares*

³ Amended by the *Notification of the SEC Office No. Sor Jor. 31/2560 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange and Procedure for Filing of Application (No. 4)* dated 2 June 2017 (effective on 16 June 2017).

³ Amended by the *Notification of the SEC Office No. Sor Jor. 31/2560 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange and Procedure for Filing of Application (No. 4)* dated 2 June 2017 (effective on 16 June 2017).

are not Traded in Foreign Exchange in cases where said person has no work experience in accounting or finance as prescribed in the Notification;

(b) whether the training curriculum for the chief financial officer and the chief accountant organized by the applicant consists of the content and the number of hours as specified on the SEC Office's website;

(15) a copy of the resolution of the board of directors' meeting whereby the board of directors appointed the general manager or any other person to act on its behalf (if any);

(16) an opinion letter pertaining to the appropriateness and sufficiency of the internal control of the foreign company and its subsidiary companies from the audit committee (if any);

(17) the updated internal audit report of the major systems, internal audit report, internal audit plan (if any) and table of authority;

(18) a copy of the updated comment from the auditor concerning the vulnerability of the important internal accounting review;

(19) a copy of the letter demonstrating that the application for offer for sale of newly issued shares is in accordance with the law and regulations applicable to the foreign company;

(20) a copy of the letter of authorization for the increase of paid-up capital from the regulator of the applicant's business operation (if any);

(21) an updated copy of the audit report from the regulator of the applicant's business operation, in this regard, including the internal control report (if any);

(22) a copy of the appointment letter or resolution of the board of directors' meeting regarding the appointment of a representative of the foreign company in the Kingdom of Thailand;

(23) a copy of the appointment letter or resolution of the board of directors' meeting regarding the appointment of a person responsible for the preparation and maintenance of evidentiary documentation of the foreign company;

(24)⁴ financial statements of the applicant as follows:

(a) in case where the financial statements or consolidated financial statements for the year ended 31 December 2023 is the most recently completed fiscal year at the time the application is filed; the financial statements or the consolidated financial statements for the three most recent years, and the latest quarterly financial statements.

(b) in all other cases which do not fall under (1); the financial statements or the consolidated financial statements for the most recent years, and the latest quarterly financial statements;

(24/1)⁴ in the case where the applicant is a public limited company whose core business is holding shares in other companies (holding company), annual financial

⁴ Amended by the *Notification of the Securities and Exchange Commission No. Sor Jor. 48/2561 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded on Foreign Exchange and Procedure for Filing of Application (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

⁴ Amended by the *Notification of the Securities and Exchange Commission No. Sor Jor. 48/2561 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded on Foreign Exchange and Procedure for Filing of Application (No. 5)* dated 28 September 2018 (effective on 1 November 2018).

statements of the company undertaking the core business and other financial statements or financial reports of said company which the applicant filed with the Stock Exchange of Thailand for the registration of newly issued shares as listed securities shall also be submitted. In this regard, the submission of annual financial statements of the company undertaking the core business shall be in accordance with the regulations specified in (24) *mutatis mutandis*.

The company undertaking the core business under Paragraph 1 means the subsidiary company under Clause 40 (1) or the company under Clause 40 (2) of the *Notification of the Capital Market Supervisory Board No. TorJor. 3/2558 regarding the Provisions relating to Offer for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange* dated 23 March 2015 which has a significant proportion compared to the size of the applicant;

(25) the checklist form for preliminary review of the completeness of information and evidentiary documents provided on the website of the SEC Office.

(26) other documents as stated in the Guidelines for the Public.

In addition to the evidentiary documents under Paragraph 1, the foreign company shall inform the auditor to prepare the working paper for an inspection by the SEC Office.

³The evidentiary documents under Paragraph 1(9) (10) (13) (14) (14/1) and (14/2) shall be filed only in the case of applying for approval of offer for sale of newly issued shares to the public for the first time. In this regard, the evidentiary documents under Paragraph 1(14/1) and (14/2) shall be submitted along with the application filed with the SEC Office from 1 January 2018 onwards.

Clause 4 The evidentiary documents in accordance with Clause 3, if prepared in languages other than Thai or English, the translation thereof shall be made in compliance with the rules prescribed in Clause 5 (2) of the *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* dated 23 March 2015 as well.

Clause 5 In case the foreign company cannot provide the information or evidentiary documents under Clause 3 due to reasonable and appropriate ground or limitation under other laws, the foreign company may request a waiver of filing of such information or documents.

In considering the waiver under Paragraph 1, the SEC Office will take into account the need for submission of the information or documents for which the waiver was requested or other sufficient measures in substitution for the submission of such information and documents as well.

Clause 6 This Notification shall come into force as from 20 July 2015.

³ Amended by the *Notification of the SEC Office No. Sor Jor. 31/2560 Re: Application Form for Approval of the Offering for Sale of Shares Issued by Foreign Company of which Shares are not Traded in Foreign Exchange and Procedure for Filing of Application (No. 4)* dated 2 June 2017 (effective on 16 June 2017).

Notified this 10th day of July 2015.

(Mr. Rapee Sucharitakul)
Secretary-General
Office of the Securities and Exchange Commission