

UNOFFICIAL TRANSLATION

Codified up to No. 5

As of 6 March 2017

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. Tor Jor. 37/2552

**Re: Qualifications of Debenture Holders' Representatives and
Authorized Actions of Debenture Holders' Representatives**

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 41(3), Section 46, and Section 49 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions relating to restriction of rights and liberties of persons, which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission, acting as the Capital Market Supervisory Board under Section 60 of the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, hereby issues the following regulations:

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

Clause 2 In this Notification and the Forms prescribed hereunder:

(1) the terms, "*institutional investor*", "*high net worth investor*", "*company*", "*listed company*", "*subsidiary*", "*executive*" and "*controlling person*" shall have the same meaning as defined in the *Notification of the Securities and Exchange Commission concerning Definitions in the Notifications relating to the Issuance and Offer for Sale of All Types of Debt Securities*;

(2) "*terms and conditions*" means the terms and conditions governing the rights and duties of the issuers and holders of the debentures;

(3)¹ "*private placement of debentures*" means an offer for sale of newly issued debentures for private placement in accordance with the *Notification of the Capital Market Supervisory Board concerning Granting of Approval for an Offer for Sale of Various Types of Newly Issued Debentures*, as the case may be;

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 62/2559 Re: Qualifications of Debenture Holders' Representatives and Authorized Actions of Debenture Holders' Representatives (No. 4)* dated 22 December 2016 (effective on 1 February 2017).

(4)² “*trust*” means a trust under the following *Notifications*:

(a) real estate investment trust (REIT) under the *Notification of the Capital Market Supervisory Board concerning Issuance and Offer for Sale of Units of Real Estate Investment Trust*;

(b) infrastructure trust under the *Notification of the Capital Market Supervisory Board concerning Issuance and Offer for Sale of Units of Infrastructure Trust*.

(5)³ “*trust manager*” means a person who acts as the manager of a *trust* in accordance with the trust instrument of a trust.

Chapter 1

Qualifications of Debenture Holders’ Representatives

Clause 3 A debenture holders’ representative shall possess the following qualifications:

(1) being a financial institution incorporated under Thai law in one of the following categories:

(a) a commercial bank;

(b) a finance company or securities finance company;

(c) a financial institution incorporated under a specific law; or

(d) a limited company or public limited company licensed to operate a securities business that is not in the category of mutual fund management or private fund management.

(2) having a clear operational unit in charge of the performance of its duties as a debenture holders’ representative, which shall at least separate its responsibilities as a debenture holders’ representative from those relating to the granting of credit facilities or securities underwriting or other operations, which may cause conflicts of interest in terms of the performance of the debenture holders’ representative. In addition, a management structure and an internal control system shall be in place to prevent acts that may cause damage to the interests of the debenture holders.

(3) ensuring that the directors, managers or *executives* having responsibilities in the operational unit relating to the duties as a debenture holders’ representative adhere to ethical principles, possess abilities and experience in the business, perform their duties based on integrity, determine to operate the business on a continuous basis, have a sound understanding and a sense of social responsibility, and do not possess the following prohibited characteristics:

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Chor. 27/2560 Re: Qualifications of Debenture Holders’ Representatives and Authorized Actions of Debenture Holders’ Representatives (No. 5) dated 6 March 2017 (effective on 1 June 2017)*.

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Chor. 27/2560 Re: Qualifications of Debenture Holders’ Representatives and Authorized Actions of Debenture Holders’ Representatives (No. 5) dated 6 March 2017 (effective on 1 June 2017)*.

- (a) being an insolvent person or adjudged under receivership;
- (b) being an incompetent or a quasi-incompetent person;
- (c) being prohibited from performing duties as a director, *executive* or *controlling person* of a *listed company* by the Stock Exchange of Thailand;
- (d) having been named in a criminal complaint, or been subject to legal proceedings in connection with the law governing securities and exchange, the law governing the financial institution business, the law governing life insurance, the law governing non-life insurance, and other similar laws in relation to financial businesses, whether under Thai law or foreign law, initiated by an authorized agency under such law, provided that such action is based on an offense relating to unfair acts with respect to securities trading or management in the nature of deceit, fraud or dishonesty;
- (e) having been named in a criminal complaint or been subject to legal action in connection with the law governing anti-money laundering, whether under Thai law or foreign law, initiated by an authorized agency under such law;
- (f) having been previously sentenced by a court judgment or been subject to settlement of a fine as punishment for the committing of an offense provided in (d) or (e);
- (g) having been previously terminated, removed from office or dismissed due to dishonest conduct;
- (h) having behavior which indicates the intention to conceal the actual financial position or results of the operations of a *company* of which the shares are listed securities or of a *company* used to conduct a public offering of securities; or having previously disclosed material facts that were false or having concealed any material fact that should have been specified in any document for disclosure to the general public or submission to the SEC Office, the Capital Market Supervisory Board or the Securities and Exchange Commission;
- (i) during the period of being the director, manager or *executive* of a *listed company* or a *company* that used to conduct a public offering of securities, having behavior which indicates that he or she failed to perform his or her duty of loyalty and duty of care to preserve the interests of the *company*, and such failure causes serious damage to the company or the shareholders, or resulted in benefits for the director, manager or *executive* or a third party;
- (j) having behavior which indicates that he or she neglected his or her duties in supervising the *company* and the *subsidiary* so as not to violate or to comply with the laws, objectives and Articles of Association of the *company*, and the resolutions of the shareholders' meeting.

The consideration of the characteristics in (f), (g), (h), (i), or (j) shall be considered from the information within five years prior to the submission date of the application to the SEC Office.

Clause 4 A person wishing to provide services as a debenture holders' representative shall submit an application to the SEC Office using the form in the electronic system of the SEC Office in order for the SEC Office to check whether all of the required qualifications are met.

⁴The SEC Office shall notify the results of its consideration under Paragraph 1 within thirty days from the date of receipt of the application with a complete and accurate set of evidentiary documentation in accordance with the Licensing Manual for the Public.

Clause 5 The SEC office shall announce the names of qualified applicants meeting the requirements of Clause 3 in the list of persons who are qualified to act as a debenture holders' representative.

The SEC Office shall have the authority to take the following actions in the case of the applicants who are unqualified in accordance with Clause 3 (3) (f), (g), (h), (i), or (j):

(1) If the facts causing an applicant to be unqualified are insignificant or have been rectified by the applicant, the SEC Office may include the name of the applicant in the list of persons who are qualified to act as a debenture holders' representative;

(2) In cases other than (1), in announcing the results of its consideration, the SEC Office shall prescribe a time period or conditions for the consideration of any subsequent application by taking into consideration the severity of the conduct constituting prohibited qualifications on a case-by-case basis. In the case that the SEC Office prescribes a time period for the consideration of an application, such period shall be no longer than five years from the date on which the court issues a final judgment in a civil case; the date on which an applicant is absolved from punishment in compliance with the court's final judgment; the date on which the criminal fining committee issues an order enforcing a fine; or the date on which the SEC Office issues the notice announcing the results of its consideration and analysis of the facts causing the applicant to be unqualified in accordance with Clause 3 (3) (f), (g), (h), (i) or (j), as the case may be.

Clause 6 If it appears later that an entity in the list of qualified entities does not possess a qualification to act as a debenture holders' representative, such entity shall notify the SEC Office of this fact within fifteen days from the date on which such entity is aware of or should have been aware of the lack of such qualification.

After having been informed of the lack of qualification under Paragraph 1, the SEC Office may prescribe a period during which the entity is allowed to rectify the causes of being unqualified to act as a debenture holders' representative.

⁴ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 34/2558 Re: Qualifications of Debenture Holders' representatives and Authorized Actions of Debenture Holders' representatives (No.2)* dated 10 July 2015 (effective on 20 July 2015).

Clause 7 In the case where the SEC Office views that an entity in the list of entities who are qualified to act as a debenture holders' representative is unqualified and such lack of qualification cannot be rectified, or the entity fails to rectify the causes of the lack of qualification, or fails to rectify within the period prescribed by the SEC Office, or the entity fails to comply with the rules prescribed in Chapter 2 of this Notification, the SEC Office shall have the authority to take the following actions:

- (1) order such entity to make a clarification or submit relevant documentation or evidence;
- (2) order such entity to rectify the act or order to act or refrain from acting in a certain way;
- (3) order for suspension or removal of the entity's name from the list of entities qualified to act as a debenture holders' representative, in which case a specific period or condition may also be prescribed.

The order of the SEC Office under (3) of Paragraph 1 shall not affect the performance of duties by such entity as a debenture holders' representative for the debentures issued prior to the date of the order of the SEC Office, to the extent necessary until a new entity is appointed as the representative of debenture holders for those debentures.

Clause 7/1⁵ For the purpose of considering the performance of duties as a debenture holders' representative under this Chapter, if the issuer is a *trust*, the consideration shall be given to the relationship between debenture holders' representative and the *trust*, the *trust manager* and the trustee of such *trust*, *mutatis mutandis*.

Chapter 2

Performance of Duties of the Debenture Holders' Representatives

Division 1

Having No Conflicts of Interest

Clause 8 Unless a waiver has been granted by the SEC Office, an entity whose name is in the list of qualified debenture holders' representatives may perform the duties as a debenture holders' representative for each issuance of debentures provided that such entity has no relationship with the debenture issuer in any of the following manners:

- (1) being a guarantor of repayment of the debt of the debenture issuer of the obligations for which it will act as a debenture holders' representative;

⁵ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 84/2558 Re: Qualifications of Debenture Holders' Representatives and Authorized Actions of Debenture Holders' Representatives (No.3)* dated 2 December 2015.

(2) holding shares of the debenture issuer carrying more than five percent of the total voting shares sold. In this regard, the shares in the following types of partnerships and companies held by the debenture holders' representative shall also be counted as shares held by the debenture holders' representative:

(a) an ordinary partnership in which a director or executive of the debenture holders' representative is a partner;

(b) a limited partnership in which a director or executive of the debenture holders' representative is a partner with unlimited liability or a partner with joint limited liability in an aggregate of more than ten percent of the total capital of the limited partnership;

(c) a company whose shares are held by the debenture holders' representative, a director or executive of the debenture holders' representative, or a partnership under (a) or (b), whereby the voting rights of those shares are in an aggregate of more than ten percent of the total voting shares sold of such company;

(d) a company whose shares are held by the debenture holders' representative, a director or executive of the debenture holders' representative, or a partnership under (a), (b), or a company under (c), whereby the voting rights of those shares are in an aggregate of more than thirty percent of the total voting shares sold of such company;

(e) a company any of whose directors or executives also serves as director or executive of the debenture holders' representative.

(3) having the debenture issuer as a shareholder of the debenture holders' representative carrying the voting rights of more than five percent of the total voting shares sold of such debenture holders' representative. In this regard, the shares of the debenture holders' representative in a partnership or company under (2)(a) to (e) shall be counted as the shares held by the debenture issuer, *mutatis mutandis*;

(4) being a shareholder carrying at least five percent of the total voting shares sold of both the debenture holders' representative and the debenture issuer except for the case of shareholding of a government agency, a state enterprise under the law on budgeting procedures, the Financial Institutions Development Fund, or a juristic person incorporated under a specific law;

(5) having a director or executive of the debenture holders' representative serve as a director or executive of the debenture issuer except for the case where not more than one person is a director without any management authority in both the debenture holders' representative and the debenture issuer, provided that the debenture holders' representative and the debenture issuer have at least nine directors in total.

(6) being involved in or having an interest in the debenture issuer, whether directly or indirectly, in any other manner that may cause the debenture holders' representative to lack operational independence.

Clause 9 A related person of the debenture holders' representative who may have conflicts of interest as specified in Clause 8 shall be granted a waiver and permission to act as the debenture holders' representative only in a *private placement* for such issuance of the debentures whereby the issuer shall disclose information showing the relationship between the person who will be appointed as the debenture holders' representative and the issuer and how that may cause a conflict of interest, to the subscribers or holders of debentures, in the supporting documentation of the offering of debentures which is distributed to the subscribers or holders of debentures.

If the issuer does not disclose the information showing the relationship between the person who will be appointed as the debenture holders' representative and the issuer and how that may cause conflicts of interest as specified in Paragraph 1, such waiver shall become ineffective, and the debenture holders' representative shall only perform its duties to the extent necessary during a transition period for the change of the debenture holders' representative, but no longer than thirty days from the last day of the offering period.

The waiver under this Clause shall not be applicable to the appointment of a new debenture holders' representative as a result of the issuer's failing to disclose the information showing the relationship between the person who will be appointed as the debenture holders' representative and the issuer and how that may cause conflicts of interest, in the supporting documentation of the offering of debentures.

Division 2

Authorized Actions of Debenture Holders' Representatives

Clause 10 Under the authorized actions prescribed in the *Securities and Exchange Act B.E. 2535 (1992)* or the agreement for the appointment of a debenture holders' representative, the debenture holders' representative shall perform its duties with due care and preserve the interest of the debenture holders as would reasonably be expected of similar professionals.

Clause 11 With respect to an authorized action of a debenture holders' representative requiring its signature, the debenture holders' representative shall also specify that such action is taken for the interest of all debenture holders.

Clause 12 A debenture holders' representative shall supervise that the issuer so that it does not take any action relating to the assets deposited as collateral to secure the repayment of the debentures which will reduce the value of the assets to the extent that lowers the ratio of the value of the collateral securing repayment of the debentures below the minimum requirement prescribed in the *terms and conditions*, or changes the collateral in a manner that negatively impacts the interests of the debenture holders in any way which is not expressly provided in the *terms and conditions*. This shall not apply to the use of the assets in the ordinary course of business.

Clause 13 A debenture holders' representative shall not grant an approval for the use of the assets deposited as collateral for the purpose of obtaining income if doing so may cause damage to the assets or change the value of those assets to the extent that the collateral value is not in compliance with the ratio prescribed in the *terms and conditions*.

Clause 14 If it appears that the issuer fails to comply with the *terms and conditions* in any respect other than a default in the payment of the principal or interest, or the conditions relating to the sinking fund (if any), which results in damage, the debenture holders' representative shall claim for the damages for all of the debenture holders within 90 days from the date on which the claim can be made, unless otherwise prescribed by the *terms and conditions*.

Clause 15 If it appears that the issuer is in default of payment of principal or interest, or in violation of a condition relating to the sinking fund (if any), the debenture holders' representative shall convene a meeting of the debenture holders in order to obtain a resolution on a further action to proceed subject to the provisions of the *terms and conditions* and the agreement for the appointment of the debenture holders' representative.

Clause 16 In notifying the debenture holders of the issuer's failure to comply with the *terms and conditions*, the representative of debenture holders shall send a written notice to the debenture holders whose names appear in the register of debenture holders. Such notice shall also describe the actions taken by the debenture holders' representative in accordance with the scope of duties and authority with respect to that matter, and the results of those actions.

The notice in Paragraph 1 shall be given within ninety days from the date on which the debenture holders' representative is aware of or should have been aware of the issuer's failure to comply with the *terms and conditions*, or from the date on which the representative took action with respect to the non-compliance in accordance with the scope of duties and authority, or from the date on which the results of the action taken with respect to the non-compliance in accordance with the scope of duties and authority occur, or from the date of receiving a request, as the case may be.

Clause 17 In convening a meeting of the debenture holders in order to obtain a resolution of the debenture holders, the debenture holders' representative shall send a written notice calling the meeting to the debenture holders whose names appear in the register of debenture holders at least seven days in advance.

Clause 18 In claiming for damages, enforcing collateral or enforcing debt repayment, the debenture holders' representative shall pay any expenses incurred in advance.

Prior to each distribution of the assets obtained from the claim for damages, the enforcement of collateral, or the enforcement of debt repayment to the debenture holders, the debenture holders' representative shall have the right to deduct the expenses which it has paid in advance from the assets obtained from such claim or enforcement.

Clause 19 In accordance with the provisions under Clause 18, upon execution of a claim for damages, the enforcement of collateral, or the enforcement of debt repayment, the debenture holders' representative shall compile and distribute all of the assets obtained from such claim or enforcement to the debenture holders proportionately to the respective portions to which they are entitled in a correct and complete manner. In this regard, the debenture holders' representative shall prepare an account showing the details of each step involved in the compilation of the assets, various expenses and the distribution of those assets

Clause 20 A debenture holders' representative shall be prohibited from taking the following actions:

- (1) entering into an agreement for receipt of collateral which contains a provision that will make it unable to enforcement the collateral;
- (2) permitting the return of, or any change to, the collateral beyond the scope specified in the *terms and conditions*;
- (3) using the assets that are deposited as collateral for the purpose of obtaining income or permitting a third party to do so, unless otherwise prescribed in the *terms and conditions*;
- (4) acquiring, whether directly or indirectly, the assets that are deposited as collateral for the issuance of the debentures, or assets of the issuer which are subject to legal execution for the purpose of repaying the debentures;
- (5) accepting assets or any other benefits, whether directly or indirectly, for its own benefit, from any person acquiring the collateral or assets subject to legal execution in the event of the enforcement of collateral or debt repayment;
- (6) accepting other benefits from the claim for damages, the enforcement of collateral, or the enforcement of debt repayment, except for the benefits that were agreed upon as provided in the agreement for the appointment of the debenture holders' representative;
- (7) entering into a settlement in the process for the claim for damages, the enforcement of collateral, or the enforcement of debt repayment, unless such settlement does not cause the debenture holders to be repaid debt and damages in an amount less than the amount to which they are entitled, or unless a resolution of the meeting of debenture holders has been obtained for such settlement;
- (8) deducting money from the fund to be distributed to the debenture holders, which was obtained from the claim for damages, the enforcement of the collateral, or the enforcement of the debt repayment, for the purpose of repaying other existing debts of the debenture holders owing to the debenture holders' representative; and
- (9) taking any unlawful action that may render the debenture holders not to be repaid in full the amount of the debt owed to them in accordance with the debentures.

Division 3
Transitional Provisions

Clause 21 The notifications of the SEC Office, and the orders and circulars that are issued or prescribe guidelines in accordance with the *Notification of the Securities and Exchange Commission No. Kor Jor. 33/2544 Re: Re: Qualifications of Debenture Holders' Representatives and Authorized Actions of Debenture Holders' Representatives* dated 19 October 2001 which had been in force prior to the effective date of this Notification shall remain in full force to the extent that they are neither inconsistent with nor contrary to the provisions prescribed in this Notification, until the notifications, orders and circulars that are issued or prescribe guidelines in accordance with this Notification come into force.

Clause 22 Any reference to the *Notification of the Securities and Exchange Commission No. Kor Jor.33/2544 Re: Qualifications of Debenture Holders' Representatives and Authorized Actions of Debenture Holders' Representatives* dated 19 October 2001 in other notifications shall mean a reference to this Notification.

Notified this 3rd day of August 2009.

(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission

Remark: The reason for the issuance of this Notification is, by virtue of the *Securities and Exchange Act (No.4) B.E. 2551 (2008)*, to prescribe the criteria relating to the qualifications of debenture holders' representatives and authorized actions of debenture holders' representatives which is the authority of the Capital Market Supervisory Board; it is therefore appropriate to issue this Notification in place of the *Notification of the Securities and Exchange Commission No. Kor Jor.33/2544 Re: Qualifications of Debenture Holders' Representatives and Authorized Action of Debenture Holders' Representatives* dated 19 October 2001.