

(UNOFFICIAL TRANSLATION)

Codified up to No. 10

As of 28 February 2020

*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. 3/2558**

**Re: Provisions relating to Offer for Sale of Shares Issued  
by Foreign Company Whose Shares Are Not Traded  
on Foreign Exchange**

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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 from 1 May 2015.

**Clause 2** In this Notification and the Application Form stipulated herein: The terms “*institutional investor*”, “*listed company*”, “*parent company*”, “*subsidiary*”, “*same-level subsidiary*”, “*associate company*”, “*connected person*”, “*executive*”, “*major shareholder*”, “*controlling person*”, “*person who may have a conflict of interest*” and “*consolidated financial statements*” shall have the same meaning as defined in the *Notification of the Securities and Exchange Commission concerning Determination of Definitions in the 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 the law of one of the *CLMV countries*.

“*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 on the Stock Exchange of Thailand.

“*executive director*” means a director holding the position of *executive* or acting as *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 Administration*<sup>1</sup>.

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

“**related party transaction**” means the execution of the transaction between a company or its *subsidiary* 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 percent of the total number of voting rights;

(3) a juristic person not registered in the Kingdom of Thailand but having the following persons hold its shares altogether more than 50 percent of the total number of voting rights:

(a) a natural person under (1);

(b) a juristic person under (2);

(4) a juristic person whose shares are held by other juristic persons stated in (3) more than 50 percent of the 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 (3) and its shares are also held by the upper one more than the same ratio thereof;

(5) a juristic person in which the persons under (1), (2), (3) or (4) have the controlling power over its business.

“**offering new shares at lower market price**” means an offer for sale of newly issued shares having the selling price below 90 percent 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 the laws or rules of the country where a *foreign company* has been established.

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

Part 1  
General Provisions

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Chapter 1  
Scope of the Notification

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**Clause 3** This Notification contains regulations related to an offer for sale of shares issued by a *foreign company*, which are applicable to the following cases only:

(1) a public offering of newly issued shares by a *foreign company* whose shares have not been traded on any foreign exchange, in order to [i] have such shares listed on the Stock Exchange of Thailand or [ii] raise fund after the *foreign company* has become a listed company shall conform to the following rules:

(a) the *foreign company* which is not a *CLMV company* under (b) shall comply with the rules related 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 related to an approval in Part 3 and the submission of the *registration statement* and draft prospectus in Part 4;

(2) an offer for sale of shares by the shareholders of the *foreign company* shall conform to the rules related 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 to be granted an approval does not exceed the quota determined by the Bank of Thailand for controlling the execution of transactions in the capital market related to foreign currencies.

Chapter 2  
Language for Submitting Information or Documentation

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**Clause 5** The submission of information or documentation to the SEC Office shall be in compliance with the following rules. In this regard, the SEC Office may grant 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 a translator certify 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 or true, and the material fact is not concealed.

Where whichever language is used for information or documentation submitted to the SEC Office under this Notification [according to Paragraph 1(1)], such language shall be used for all subsequent submissions unless the SEC Office grants a waiver whenever it is necessary or appropriate.

### Chapter 3 Powers of the SEC Office

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**Clause 6<sup>1</sup>** *Repealed.*

**Clause 7** In case a certain fact appears 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 characteristics in compliance with the rules or conditions for obtaining 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 the law on securities and exchange<sup>2</sup> 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 damage 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 a certain fact appears to the SEC Office after an applicant has obtained an approval for offer for sale of newly issued shares under Part 2 or Part 3 that the deliberation of the SEC Office would have been changed if such fact had 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) order the applicant to suspend the offer for sale of shares in the portion which has not been offered or subscribed, and order to discharge the approval in such portion.

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<sup>1</sup> Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 46/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.2)* dated 10 July 2015.

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

**Clause 9** In case of any of the following circumstances, the SEC Office would grant 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 Paragraph 1, the SEC Office shall mainly consider [i] the appropriateness and the sufficiency of the information for supporting the investors to make a 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 9/1<sup>7</sup>** In case an applicant fails to comply with the post-offering rules related to advertisement under Part 2 or Part 3, the applicant shall comply with one or many of the following orders issued by the SEC Office:

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

(2) revise the information in the advertisement or the sale promotion;

(3) provide investors with information that is complete, accurate, factual and not misleading;

(4) act or refrain from acting in any way within a specified period in order for investors to make or review a decision based on the information that is complete, accurate, factual and not misleading.

**Clause 10** The SEC Office is empowered to grant a waiver for disclosure of details of information additionally stipulated under this Notification if the offeror is 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 other sufficient measures have been laid out to replace such disclosure.

**Clause 11** In deliberating the information in the *registration statement* and 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 making investment decisions:

(1) disclose additional information that may affect investors' decisions;

(2) amend the information or submit additional information;

(3) have an independent expert prepare an opinion related to

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<sup>7</sup> Added by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 26/2562 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.8)* dated 12 April 2019 (effective from 16 May 2019).

the accuracy, completeness or reliability of the information in the **registration statement** and draft prospectus.

In case the offeror fails to comply with the SEC Office's order under Paragraph 1, it shall be deemed that the offeror no longer wishes to submit the **registration statement** and draft prospectus to the SEC Office.

## Part 2

### Public Offering of Newly Issued Shares

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#### Chapter 1

#### Submission of an Application

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**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 evidentiary documentation by complying with form and procedure as stipulated by the Notification of the SEC Office.

An application submitting under Paragraph 1 shall be jointly prepared by a financial advisor whose name appears on the SEC Office's approved list.

**Clause 13<sup>1</sup>** An applicant shall pay the application fee at the amount 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 after the SEC Office has already received the complete and accurate application and evidentiary documentation as prescribed in the *Licensing Manual for the Public*.

Where it is necessary for the SEC Office to visit the place of business or any other establishment of the applicant or its **subsidiary**, the applicant shall be responsible, as appropriate, for accommodation and travelling expenses incurred from such visit. In this regard, clear criteria may be established by the SEC Office.

Paragraph 2 shall not apply in the case where the place of business or any other establishment of the applicant or its **subsidiary** is located in Bangkok or its periphery.

**Clause 13/1<sup>1</sup>** After the SEC Office has received the complete and accurate application and 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 writing with regard to skeptical issues resulted from the ascertaining process for the applicant

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 46/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.2)* dated 10 July 2015.

<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 46/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.2)* dated 10 July 2015.

to clarify the issues within a specified period. In this regard, the aforementioned process shall be within 120 days from the date where the SEC Office has received the complete and accurate application and 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 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 Paragraph 2. In this regard, the SEC Office shall consider the application for the waiver within the same period as the consideration of the application under Paragraph 2.

## Chapter 2 Rules for an Approval

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**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, and shall also meet the following requirements:

- (1)<sup>2</sup> not having characteristics under clause 15/1 ,except in the case where the applicant is a listed company, not having characteristics under clause 15/1 (1) (a);
- (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;

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<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.3)* dated 13 July 2015.

(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

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**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 15/1<sup>2</sup>** An applicant shall not have any of the following characteristics unless the conditions specified in clause 15/2 are met:

(1) within a period of five years prior to the filing date of an application for an offer for sale of newly issued shares, the applicant shall not have any of the following characteristics:

(a) having a record of contravening a regulation or condition related to securities offering in a significant matter;

(b) having been rejected by the SEC Office regarding an application for an offer for sale of newly issued shares due to a significant suspicious ground regarding management mechanism in any of the following manners:

1. having a possibility to be unable to treat shareholders fairly by giving benefits to any group of shareholders, which will create an advantage over other shareholders or give inappropriately more benefits than other shareholders;

2. being unlikely to be able to protect shareholders' rights by allowing any person to receive financial gain beyond what should be received normally or by causing the company to lose a benefit that should have been received.

(c)<sup>2</sup> having an application rejected, or an approval for an offer for sale of newly issued shares revoked, by the SEC Office on a suspicious ground related to disclosure of information to the public or the SEC Office that was incomplete, contrary to facts, insufficient for making an investment decision, or that misled investors in a manner of concealing or disguise or making up non-existing facts in material transactions or operation;

(d) having withdrawn an application for an offer for sale of newly issued shares without a clarification of the suspicious grounds under (b) or (c) to the SEC Office or with a clarification that does not contain facts or reasonable ground for refuting the suspicious grounds under (b) or (c).

(2) within a period of ten years prior to the filing date of the application for an offer for sale of newly issued shares, the applicant has been sentenced by a final judgement in

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<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.3)* dated 13 July 2015.

<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 43/2560 Re: Application for Approval and Granting of Approval for Offering of Newly Issued Shares (No. 3)* dated 29 June 2017 (effective on 16 July 2017).



an offense concerning property, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(3) being currently subject to a criminal complaint or legal prosecution for an offense concerning property by a relevant agency, only for a cause arising from a deceitful, fraudulent or dishonest act that results in widespread damage, either under Thai or foreign laws;

(4) being a person subject to a suspicious ground of being arranged for the person with the characteristics under (1)(2) or (3) to avoid compliance with the regulations for consideration under (1)(2) or (3) imposed by the SEC Office.

**Clause 15/2<sup>2</sup>** The provisions under clause 15/1 (1) and (2), as the case may be, shall not apply to the applicant who has rectified the cause, work system, management structure and operating control, which has caused the applicant to have the characteristics under Clause 15/1 (1) or (2).

**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 Exchange<sup>3</sup> 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.

## Division 2

### Provisions relating to Shareholders and Protection

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**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 percent of the total number of

<sup>2</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.3)* dated 13 July 2015.

<sup>3</sup> Law on Securities and Exchange means the *Securities and Exchange Act B.E. 2535 (1992)*.

voting rights of each company thereof unless the applicant would be able to demonstrate that shareholding of such person more than such 10 percent 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 percent:

(a) the applicant shall not hold shares of *any other company* in case such company holds shares of the applicant more than 50 percent;

(b) in case the applicant holds shares of *any other company* more than 50 percent, 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 percent of each, there shall be no cross shareholding among such companies;

(2) in case of holding shares more than 25 percent but no more than 50 percent:

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

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

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

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

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

For the purpose of the consideration under Paragraph 1:

(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 percent;

(b) a natural person holding more than 25 percent 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 percent 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 Paragraph 1, 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

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**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 Thai<sup>4</sup> 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 directors shall be an audit committee as prescribed in Clause 32.

**Clause 29<sup>9</sup>** The structure of the board of directors and the management shall be in accordance with the following rules:

(1) an adequate check and balance mechanism shall be put in place in compliance with the rules prescribed in Clause 30, Clause 32, and Clause 32/1 at a minimum;

(2) the positions of chairman and manager or any equivalent position called otherwise shall not be held by the same person.

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

<sup>9</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 16/2563 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.10)* dated 28 February 2020 (effective from 1 January 2021).

**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 be compliance with the following rules:

(1) holding shares not more than 1 percent 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 Paragraph 1 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 percent 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 percent 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 Paragraph 1, 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 Paragraph 1, 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 32/1<sup>4</sup>** The assigned person to the highest responsibility in Accounting and Finance and the assigned person to the direct responsibility in accounting supervision of an applicant who has submitted application for an offer for sale of newly issued shares to the public for the first time (Initial Public Offering: IPO) as from 1 January 2018 shall comply with the following criteria:

(1) the person assigned to the highest responsibility in Accounting and Finance shall have the following qualifications:

(a) holding at least a bachelor's degree or equivalent;

(b) having been assigned to the highest responsibility in Accounting and Finance by the applicant for at least one year prior to the filing date of the application with the SEC Office unless there is a necessary and appropriate ground to receive a waiver from the SEC Office in any of the following cases:

1. the applicant can demonstrate that such person has worked in Accounting and Finance for the applicant for at least one year before being assigned to the highest responsibility in Accounting and Finance for the applicant;

2. the applicant can demonstrate that the assigned person in direct charge of the supervision of the accounting preparation under (2) or the personnel in Accounting of the applicant has knowledge and understanding of the accounting system of the applicant, and such person has worked in Accounting for the applicant for at least one year prior to the filing date

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<sup>4</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 41/2560 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.5)* dated 2 June 2017.

of the application and is responsible for the preparation of the financial statements of the applicant and capable of preparing the financial statements of the applicant for the latest period which shall be submitted to the SEC Office together with the application within the specified period of preparation and submission imposed on listed companies.

(c) having work experiences in any of the following areas:

1. Accounting or Finance for at least three years during the period of five years prior to the filing date of the application;
2. working for any business or organization deemed by the Audit Committee of the applicant to benefit directly to the business operation of the applicant and such work experience has continued for at least five years during the period of seven years prior to the filing date of the application with the SEC Office;

(d) having passed the training concerning preparation in Accounting and Finance or continued development of knowledge in Accounting as specified by the SEC Office on the website of the SEC Office. In the case where the applicant personally organizes a curriculum to accommodate the continued development of knowledge in Accounting, the applicant shall demonstrate that the contents and the training hours of the curriculum have been considered by the Audit Committee of the applicant to be in accordance with the criteria specified by the SEC Office.

(2) The assigned person to the direct responsibility of accounting supervision shall have the following qualifications:

- (a) holding at least a bachelor's degree or equivalent; in accounting;
- (b) having work experience in Accounting for at least three years during the period of five years prior to the date of filing the application with the SEC Office;
- (c) having passed the training that demonstrates continued development of knowledge in Accounting as specified by the SEC Office on the website of the SEC Office. In the case where the applicant organizes such curriculum personally, it shall be demonstrated that the contents and the training hours of the curriculum have been considered by the Audit Committee of the applicant to be in accordance with the criteria specified by the SEC Office.

**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 Disclosure of Information

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**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 34/1<sup>5</sup>** The following financial statements of the applicant shall be accurate, reliable and in accordance with the regulations under Clause 35:

(1) 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.

(2) 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.

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<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

**Clause 35<sup>5</sup>** A financial statement of an applicant as specified in Clause 12 shall be 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 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*.

(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*.

In this regard, there shall not be reasonable grounds to suspect an audit oversight authority under sub clause (b) of Paragraph 1 about its 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 Exchange<sup>6</sup> or rules issued by virtue of such law.

(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 Paragraph 1.

## Division 5

### Provision relating to Financial Advisor

<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

<sup>6</sup> Law on Securities and Exchange means *The Securities and Exchange Act B.E. 2535 (1992)*.

**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 Paragraph 2 of Clause 54.

The SEC Office is empowered to render totally or partly waiver in compliance with the rules under Paragraph 1. 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 percent 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 Paragraph 2;

(3) being a **foreign company** of which shares are held by **Thai person** in the amount of [below 50 percent but] not less than 40 percent 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 Paragraph 2 shall be included in the amount thereof.

The amount of shares held by **Thai person** under sub clause (2) and (3) of Paragraph 1 shall be considered only **Thai person** who:

(1) holds shares in the amount of more than 10 percent 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

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**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 percent 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 percent 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 percent 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 an 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)<sup>4</sup> the rules regarding directors and structure of directors and management as described by Clause 28, Clause 29, Clause 30, Clause 31, Clause 32, and Clause 32/1 [under Division 3];

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

(d)<sup>5</sup> the rule on financial statement as described by Clause 34/1 and Paragraph 1 of Clause 35;

(e) [the rule on assistance of inspection and providing information

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<sup>4</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 41/2560 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.5)* dated 2 June 2017.

<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

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 percent 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 Paragraph 2;

2. being the **foreign company** of which shares are held by **Thai person** altogether [lower than 50 percent but] not less than 40 percent 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 Paragraph 2 shall be included in the amount thereof;

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

1. who hold shares in the amount of more than 10 percent 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 Paragraph 1 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<sup>5</sup>** *Repealed.*

**Clause 40** A company deemed to be the company operating core business for the applicant as prescribed in sub clause (1) of Paragraph 1 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 percent 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 percent of the total number of voting rights

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<sup>5</sup> Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

of such company;

(b) holds shares in the amount of 20 percent or more, but not more than 25 percent 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 percent of the total number of voting rights;

(c) is going to hold shares of such company more than 25 percent 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 40/1**<sup>8</sup> In case an applicant operates a large portion of its core business through a company under Clause 40(1) (2) or (3) based on a legal or trade ground in line with the business model of the applicant who supervises the business operation of such company in group through a significant shareholding of the central company of each group, the regulations imposed on the company operating the core business shall solely apply to the following companies except that the regulations under Clause 16 shall apply to all foreign companies under Clause 40(1) and (2):

(1) central company;

(2) **subsidiary** in the group of the central company whose size is significant in comparison to the size of the applicant.

The central company under Paragraph 1 means **subsidiary** under Clause 40(1) for which the applicant has an adequate and appropriate supervisory mechanism that allows the central company to control the management and the handling of material matters of the company operating the core business, and such mechanism has been considered by the audit committee of the applicant and in accordance with the supervisory framework approved by the board of directors of the applicant. In this regard, the applicant shall have a measure for considering the adequacy and appropriateness of such mechanism every year.

**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

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<sup>8</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 53/2562 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.9)* dated 3 December 2019 (effective from 9 December 2019).

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 Paragraph 1 are applicable to the company operating core business as prescribed in Clause 40(2) and (3), *mutatis mutandis*.

**Clause 42<sup>5</sup>** 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 laws and regulations of foreign jurisdiction being comparable to *Thai company* as prescribed in Clause 16.

#### Division 7

#### Additional provision in case of an applicant being a listed company

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**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

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<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

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 percent 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 percent 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 Paragraph 2 of Clause 41.

### Chapter 3 Conditions after Obtaining an Approval

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

- (1) conditions required to perform before or during 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 during the Offering Period

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**Clause 50<sup>7</sup>** 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 shall comply with the following rules completely and the rules related to the appropriateness of the information published in accordance with the *Notification of the Office of the Securities and Exchange Commission concerning Publication of Information related to Offer for Sale of Securities before the Effective Date of the Registration Statement and Draft Prospectus*:

- (1) not materially contain false, overstated, distorted, concealing or misleading information;
- (2) the material information presented in the advertising shall not be beyond the information presented in the *registration statement* and draft prospectus which have been submitted to the SEC Office under Part 4 of this Notification.

**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

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<sup>7</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 26/25 62 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.8)* dated 12 April 2019 (effective from 16 May 2019).

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)<sup>1</sup> 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

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**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:

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<sup>1</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 46/2558 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.2)* dated 10 July 2015.

(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 Paragraph 1 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 Paragraph 1. 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 Paragraph 1, 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 effect 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.

Division 3  
Other Conditions Required to Perform after  
Offering for Sale

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**Clause 60<sup>5</sup>** 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

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<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

the SEC Office when necessary and appropriate:

(1) a resolution of shareholders' meeting approving the issuance of 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, excluding the votes of a shareholder having special interest in such resolution regardless of his personal own interest or the interest of his ***connected person***;

(2) in case where the issuance of securities under Paragraph 1 is an ***offering new shares at lower market price***, a resolution of shareholders' meeting approving the issuance of 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 and such issuance of securities shall not be voted against by the shareholders holding shares in aggregate number of ten per cent or more of the total number of votes of the shareholders attending the meeting. In this regard, the counting of number of votes shall not include the vote of a shareholder having special interest in such resolution regardless of his personal own interest or the interest of his ***connected person***.

The provision under Paragraph 1 shall not be applicable to the offer for sale of newly issued securities in the manner of right offering issue.

**Clause 61<sup>5</sup>** 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 it has any of the following characteristics:

(1) the company obtains shareholder approval with counting votes not less than three-fourths of the entire votes of the attending shareholders qualified to vote and no more than ten percent of the total votes of the shareholders who attend the meeting vote against the proposal. In this regard, the counting of number of votes 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.

(2) there is no material change of the use of proceeds which shall be in accordance with the regulations specified by the SEC Office.

**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.

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<sup>5</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 55/2561 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.6)* dated 28 September 2018 (effective on 1 November 2018).

**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 of Newly Issued Shares of  
CLMV Company

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**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 percent 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 percent but] not less than 40 percent 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 percent

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 Paragraph 1, the SEC Office is empowered as prescribed in Clause 58 and Clause 59, *mutatis mutandis*.

#### Part 4

#### Submission of the Registration Statement and Draft Prospectus

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#### Chapter 1

#### General Provisions

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**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<sup>3</sup>** 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 by procedures specified in Clause 71.

Chapter 2  
Procedures and Fees for Submission of the Registration Statement  
and Draft Prospectus

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**Clause 71<sup>6</sup>** Before each offer for sale of shares, an offeror shall submit the *registration statement* and draft prospectus to the SEC Office together with the evidentiary documentation as specified on the website of the SEC Office, according to the following forms and procedures:

(1) submit the registration statement and draft prospectus and the evidentiary documentation in an electronic form through the electronic system of the Stock Exchange of Thailand provided for such propose;

(2) submit one set of the following information in the printed form according to the guidelines provided on the website of the SEC Office:

(a) the certification of information of the registration statement and draft prospectus printed from the electronic system of the Stock Exchange of Thailand which have been submitted by the offeror under (1) and signed in accordance with the rules specified in Clause 80;

(b) the original of the power of attorney showing that the filer of the information under (1) and (2)(a) including the related evidentiary documentation has been assigned by the offeror to handle such matter and other necessary matters.

**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*.

Chapter 3  
Form and Information in the Registration Statement

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<sup>3</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2559 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.4)* dated 10 February 2016.

<sup>6</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2562 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.7)* dated 3 January 2019 (effective from 1 February 2019).

**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 Paragraph 1 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 percent 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 person 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 work 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

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**Clause 80<sup>6</sup>** The *registration statement* submitted to the SEC Office shall be signed to certify the accuracy and completeness of the contained information in compliance with the following rules:

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

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

(a) the shareholder and in case of such shareholder being a juristic person, the authorized person thereof together with the company's seal affixed thereto (if any);

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

(3) in case of an offer for sale with the service of a financial advisor, the authorized person of the financial advisor shall affix signature together with the company's seal affixed thereto (if any).

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<sup>6</sup> Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2562 Re: Provisions relating to Offer for Sale of Shares Issued by Foreign Company Whose Shares Are Not Traded on Foreign Exchange (No.7)* dated 3 January 2019 (effective from 1 February 2019).

**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 the Registration Statement and  
Draft Prospectus

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**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 the aforementioned information shall not be less than 14 days.

Notified this 23<sup>rd</sup> day of March 2015.

(Vorapol Socratyanurak)  
Secretary-General

Office of the Securities and Exchange Commission  
Chairman  
Capital Market Supervisory Board