

(UNOFFICIAL TRANSLATION)

Codified up to No. 2

As of 13 June 2016

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. 73/2558

Re: Particulars of Notice Calling Shareholders' Meeting of Listed Companies to Obtain Approval for Issuance and Offer of Securities for Sale

By virtue of Section 16/6 and Section 89/27 of the Securities and Exchange Act B.E. 2535 (1992) as amended by the Securities and Exchange Act (No. 4) B.E. 2551 (2008), the Capital Market Supervisory Board hereby issues the following regulations:

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

Clause 2 In this Notification:

“*listed company*” means a public limited company incorporated under the law of Thailand, the shares of which are listed securities on the Stock Exchange;

“*Stock Exchange*” means the Stock Exchange of Thailand;

“*Notification concerning the Offer for Sale of Debt Securities*” means the *Notification of the Capital Market Supervisory Board concerning the Application and Approval of the Offer for Sale of Newly-issued Debt Securities*;

“*Notification concerning the Offer for Sale of Debentures in Foreign Country*” means the *Notification of the Capital Market Supervisory Board concerning Rules, Conditions, and Procedures for Application and Approval of the Offer for Sale of Newly-Issued Debentures to Investors in Foreign Country*.

Clause 3¹ The notice calling a shareholders' meeting of *listed companies* to obtain approval for the issuance and offer for sale of the following securities shall be subject to this Notification, excluding the issuance and offer for sale of securities to directors or employees under the Notifications of the Capital Market Supervisory Board in that respect:

(1) capital shares, whether offered for sale to shareholders, the general public, or to any other person;

(2) underlying newly-issued shares for other securities, for example, share

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 22/2559 Re: Particulars of Notice Calling the Shareholders' Meeting of Listed Companies to Obtain Approval for Issuance and Offer for Sale of Securities (No. 2)* dated 13 June 2016, effective from 16 July 2016;

warrants, transferable subscription rights, and depository receipt representing interest from Thai underlying securities;

(3) convertible debentures offered for sale in a private placement under the *Notification concerning the Offer for Sale of Debt Securities*; and

(4) convertible debentures offered for sale to foreign investors under the *Notification concerning the Offer for Sale of Debentures in Foreign Country* only in the case of an offer for sale to investors in a similar procedure to the offer for sale of debentures in a private placement under the *Notification concerning the Offer for Sale of Debt Securities*.

Clause 4 The notice calling a shareholders' meeting to obtain approval for the issuance and offer for sale of securities under Clause 3 shall contain information that is material to the decision-making of the shareholders and must be complete, accurate, and not contain materially false information nor conceal any material fact that should have been expressly notified, and must also specify at least the following information as prescribed in this Notification.

Chapter 1²

Particulars of Notice Calling Shareholders' Meeting in respect of the Issuance and Offer for Sale of Shares

Division 1

Minimum Particulars of Notice Calling Shareholders' Meeting

Clause 5 The notice calling a shareholders' meeting to obtain approval for the issuance and offer for sale of shares under Clause 3(1) and Clause 3(2) shall clearly specify at least the following information, except in the case where the approval is for the issuance and offer of newly-issued shares for sale in a general mandate, when the notice shall comply with the Notification of the Board of Governors of the *Stock Exchange of Thailand* in that respect:

(1) details of the offer for sale, for example, the number of shares offered for sale, the types of investors to whom the shares will be offered for sale, the methods used in determining the offering price and the market price, and the methods of the offer for sale and

² Topic of Chapter 1 is amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 22/2559 Re: Particulars of Notice Calling the Shareholders' Meeting of Listed Companies to Obtain Approval for Issuance and Offer for Sale of Securities (No. 2)* dated 13 June 2016 (effective on 16 July 2016).

the allocation;

(2) the objective of the issuance and plan for the use of the proceeds must contain at least the following details:

(a) the objectives of the issuance and the plan for the use of the proceeds derived from the offer of shares for sale must be clearly described. In the case that the *listed company* plans to use the proceeds for various objectives, the details of each objective, as well as the budget and the plan for the use of the proceeds for achieving each particular objective shall be clearly and separately specified;

(b) in the case that the *listed company* plans to use the proceeds derived from the offer of shares for sale in implementing a project, a brief description of the project details, indicating the project features, the opportunities by which the project will generate income for the *listed company*, the potential impact on the *listed company* if the project cannot be successfully implemented, and the risks associated with the project implementation shall be specified, as well as the budget expected to be used in the initial stage of the project and the total budget expected to be used in order for the project to generate income for the *listed company* (if any);

(c) in the case that the implementation under the use of proceeds plan constitutes a transaction with a related person or a material transaction which constitutes an asset acquisition or disposal which requires an approval from a meeting of shareholders in accordance with the *Notification of the Capital Market Supervisory Board concerning the Criteria for Entering into Connected Transactions* or the *Notification of the Capital Market Supervisory Board concerning the Criteria for Entering into Material Transactions Deemed as Acquisition or Disposal of Assets*, as the case may be, the agenda item for obtaining the approval of the shareholders for entering into such transaction must be clearly specified in the notice calling the shareholders' meeting;

(3) impact on the shareholders from the offer of shares for sale and at least the impact on the market price of the shares (price dilution) after the offer for sale of the newly-issued shares, the impact on the profit share or the voting rights of the shareholders (control dilution), and the value obtained by the shareholders in comparison with the impact on the profit share or the voting rights of the shareholders must be clearly specified;

(4) opinion of the board of directors at least on the following matters:

(a) the reasons and necessity for the capital increase;

(b) the feasibility of the plan for the use of the proceeds derived from the offer for sale of shares. In the case that the proceeds derived from the offer for sale of shares will be used in implementing a project, the board of directors shall provide an opinion on the feasibility and the certainty that the project will be implemented, as well as the status and progress of the project (if any);

(c) the reasonableness of the capital increase, the plan for the use of

proceeds derived from the offer for sale of shares and the project to be implemented, as well as the adequate sources of capital in the case that the proceeds derived from the offer of shares for sale do not cover the total budget required to implement the plan or the project;

(d) potential impact on the company's business operations, financial position and results of operation, caused by the capital increase and the implementation of the plan for the use of proceeds or the implementation of the project;

(5) statement that expressly indicates that if a director of the company fails to perform fiduciary duties to preserve the interest of the company with respect to the capital increase, and such failure causes damage to the company, the shareholders may file a lawsuit to claim damages against such director on behalf of the company in accordance with Section 85 of the *Public Limited Companies Act B.E. 2535 (1992)*. If such failure results in the director or related persons obtaining undue benefits, the shareholders are entitled to bring an action on behalf of the company to claim against such director to return the benefits in accordance with Section 89/18 of the *Securities and Exchange Act B.E. 2535 (1992)*.

Division 2

Additional Particulars for Issuance and Offer for Sale of Shares in a Private Placement

Clause 6³ The notice calling a shareholders' meeting of a *listed company* to obtain approval for the issuance and offer of shares for sale in a private placement in the following cases shall contain the information prescribed in Clause 5 and the additional information prescribed in this Division:

(1) the issuance and offer of shares for sale under the *Notification of the Capital Market Supervisory Board concerning the Approval of the Offer for Sale of Newly-Issued Shares by Listed Companies in a Private Placement*;

(2) the issuance and offer for sale of underlying shares provided for the exercise of rights under share warrants under the *Notification of the Capital Market Supervisory Board concerning the Application and the Approval of the Offer for Sale of Newly-issued Share Warrants and Newly-issued Underlying Shares*; and

(3) the issuance and offer for sale of underlying shares provided for the exercise of rights under depository receipt representing interest from Thai underlying securities under the *Notification of the Capital Market Supervisory Board concerning the*

³ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Jor. 22/2559 Re: Particulars of Notice Calling the Shareholders' Meeting of Listed Companies to Obtain Approval for Issuance and Offer for Sale of Securities (No. 2)* dated 13 June 2016, effective from 16 July 2016;

Offer for Sale of Thai Non-voting Depository Receipts.

Clause 7 The notice calling a shareholders' meeting to obtain approval from the shareholders and pass a resolution for the issuance and offer for sale of shares which expressly specifies the offer price, whether or not the issuance and offer is of the remaining shares from the right offering, shall specify the following additional information:

(1) the notice shall clearly specify the names of the investors to be offered the shares for sale, unless the non-disclosure of the investors names is in the interests of the company and the board of directors, after consideration and verification of information concerning the investors, considers that such persons will truly be able to generate benefits for the *listed company*;

(2) opinion of the board of directors on at least the following matters:

(a) appropriateness of the price of the newly-issued shares to be offered by the *listed company* to the investors under (1) and the basis for the determination of such offer price;

(b) reasons and necessity for the offer for sale of the newly-issued shares to the investors under (1); and

(3) confirmation of the board of directors indicating that in the consideration and verification of the information concerning the investors under (1), the board of directors has acted with care and is of the view that such persons have the potential to make an investment, or action has been taken to ensure that such persons will be able to make an actual investment in the company.

Clause 8 The notice calling a shareholders' meeting to obtain approval for the issuance and offer for sale of shares which expressly proposes that the shareholders pass a resolution to determine an offer price that is lower than the market price, or to approve the offer for sale of the remaining shares from the right offering at a price lower than the fully-diluted price of the shares taking into account the potential effect of the offer for sale of all newly-issued shares to the shareholders proportionate to their respective shareholdings, shall specify the following additional information:

(1) right of the shareholders to reject the offer for sale of the newly-issued shares at a low price as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Approval of the Offer for Sale of Newly-issued Shares by Listed Companies in a Private Placement*; and

(2) opinion of the board of directors with respect to the value of the benefits to be obtained from the investors under Clause 7(1) compared with the offer for sale of the newly-issued shares at a low price to such persons, by taking into consideration the implication of the expenses incurred and the financial position of the *listed company* as a

result of the offer for sale of the newly-issued shares in accordance with the *financial reporting standards on share-base payments*.

Clause 9 In addition to the information prescribed in Clause 8, the notice calling a shareholders' meeting to obtain approval for the issuance and offer of shares for sale in which the request for approval of the shareholders to determine an offering price that is lower than the market price shall specify the opinion of the board of directors stating that the investors under Clause 7(1) have related businesses that will benefit the *listed company*, or possess knowledge or experience that will benefit or support the business of the *listed company*.

Clause 10 For the purposes of the provisions in Clause 8 and Clause 9, the market price and the average price of the shares shall be calculated when considering the potential impact from the offer of the total amount of newly-issued shares for sale to the shareholders proportionate to their respective shareholdings (fully-diluted price) as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Approval of the Offer for Sale of Newly-issued Shares by Listed Companies in a Private Placement, mutatis mutandis*.

Chapter 2

Particulars of the Notice Calling a Shareholders' Meeting for the Issuance and Offer for Sale of Convertible Debentures in a Private Placement

Clause 11 The notice calling a shareholders' meeting to obtain approval for the issuance and offer of convertible debentures for sale under Clause 3(3) and Clause 3(4) shall clearly specify at least the following information:

(1) preliminary information on the convertible debentures, for example, the price or ratio which is expected to be the conversion price or conversion ratio, the exercise period, the last date of the exercise period, and the reason for the issuance of the newly-issued underlying shares resulting from provisions for changes in the exercise of conversion rights;

(2) basis and appropriateness in determining the conversion price or conversion ratio, and the exercise period;

(3) the objectives of the issuance of convertible debentures and the use of proceeds plan and the information under Clause 5(2) must at least be specified, *mutatis mutandis*;

(4) the impact on the shareholders of the listed company (dilution effect) if the convertible debentures are fully exercised and the impact on the market price of the

shares (price dilution) and the impact on the profit share or the voting rights of the shareholders (control dilution) must at least be specified;

(5) opinion of the board of directors with respect to the issuance and offer for sale of the convertible debentures which contains at least the information under Clause 5(4), *mutatis mutandis*, as well as an analysis of the debt repayment ability of the company to those shareholders who do not exercise their conversion rights on the maturity of the debentures;

(6) method of allocation of the convertible debentures; and

(7) the statement under Clause 5(5), *mutatis mutandis*.

Clause 12 In the case that the offer of convertible debentures for sale under Clause 3(3) and Clause 3(4) is an offer for sale at a low price under the *Notification concerning the Offer for Sale of Debt Securities* or the *Notification concerning the Offer for Sale of Debentures in Foreign Country*, as the case may be, the notice calling the meeting shall contain the following additional information:

(1) objective of the offer for sale of the newly-issued convertible debentures at a low price;

(2) details of the newly-issued convertible debentures and newly-issued underlying shares provided for the exercise of rights under the convertible debentures with respect to the number of securities offered for sale, the offering price of the convertible debentures, and the exercise price specifying a fixed price, or a fixed maximum discount;

(3) the market price used in comparison with the offering price of the convertible debentures and the exercise price of the shares under the convertible debentures, as well as the calculation methods;

(4) in the case that the offering price is fixed, the group of persons expected to be offered convertible debentures for sale must be specified;

(5) the impact on the shareholders of obtaining the approval for the offer for sale of the convertible debentures at a low price, and at least the information on the impact on the market price of the shares (price dilution) after the offer for sale of the convertible debentures at a low price, and the impact on the profit share or the voting rights of the shareholders (control dilution) must be specified;

(6) rights of the shareholders to oppose the offer for sale of the convertible debentures at a low price under the *Notification concerning the Offer for Sale of Debt Securities* or the *Notification concerning the Offer for Sale of Debentures in Foreign Country*, as the case may be; and

(7) the opinion of the board of directors indicating the necessity of the offer for sale of the convertible debentures at a low price, describing the value of the benefits to be obtained by the company compared with the loss to the company resulting from the difference between the offering price of the convertible debentures, together with the exercise

price, and the market price, as well as the appropriateness and the reasons for the applicable market price and the determination of the offering price.

Notified this 28th day of October 2015.

(Mr. Rapee Sucharitakul)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board