

(UNOFFICIAL TRANSLATION)

Codified up to No. 3

As of 16 December 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. 34/2552

Re: Criteria for Offering for Sale of Newly Issued Securities with a Tender Offer for the Existing Securities of Listed Companies for Restructuring of Shareholding and Management

By virtue of Section 16/6, Section 247, and Section 250 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* and Section 35, Section 69, Section 70, Section 71, Section 248, and Section 256 of the *Securities and Exchange Act B.E. 2535 (1992)*, which contain certain provisions relating to the restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64, of the *Constitution of the Kingdom of Thailand* so permit by virtue of law, the Securities and Exchange Commission, acting as the Capital Market Supervisory Board under Section 60 of the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)* hereby issues the following regulations:

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

Clause 2 Unless specifically defined herein, the definitions prescribed and notified in the *Notification of the Securities and Exchange Commission concerning the Definitions in the Notifications relating to the Issuance and Offer for Sale of Securities* shall apply as the definition of the terms in this Notification and in the **registration statement** for the offering for sale of **securities** under this Notification.

- (1) “**securities**” means shares and **convertible securities**, and shall include newly-issued shares underlying **convertible securities**;
- (2) “**convertible securities**” means convertible debentures or share warrants;
- (3) “**investment company**” means a public limited company that does not operate a core business of its own, and whose objective is to invest in other businesses;
- (4) “**applicant**” means a public limited company that files an application for the approval for the offer for sale of newly-issued **securities** and at the same time makes a tender offer for the **securities** of a **listed company**;

(5)² “*listed company*” means a company the *securities* of which are listed on the *Stock Exchange* and the business of which will be taken over by the tender offer of securities by the *applicant*;

(6) “*executive*” means the manager or a person holding the top four executive positions below the manager, and every person holding a position equivalent to a fourth level executive, and shall also include a person in an executive-level position in accounting or finance from the division manager level or equivalent;

(7) “*Stock Exchange*” means the Stock Exchange of Thailand.

Clause 3 This Notification shall be applicable to applications for an approval of the offer for sale of newly-issued *securities* with the objective of reorganizing the shareholding structure of *listed company*. The *applicant* shall offer the newly-issued *securities* for sale to the *securities* holders of the *listed company* and at the same time make a tender offer for the *securities* of that *listed company* in order to hold 25 percent or more of the total issued shares of such *listed company*. This Notification prescribes the provisions related to the following matters:

- (1) applications for approval and the approval of the offer for sale of newly-issued *securities* to the holders of the same type of *securities* as those of a [*listed company*];
- (2) filing of the registration statement for the *securities* offering approved under (1);
- (3) making a tender offer for the *securities* issued by a *listed company*; and
- (4) preparation of an opinion on the tender offer for the *securities* under (3) by a [*listed company*].

Clause 4 The *Notification of the Capital Market Supervisory Board concerning the Subscription, Underwriting, and Allocation of Newly Issued Securities* shall not be applicable to the offer for sale of newly issued *securities* under this Notification.

Chapter 1

Application for and Approval of the Offer for Sale of Newly-issued Securities

² Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 53/2559 Re: Criteria for Offering for Sale of Newly Issued Securities with a Tender Offer for the Existing Securities of Listed Companies for Restructuring of Shareholding and Management (No. 3)* dated 16 December 2016 (effective on 16 January 2017).

Clause 5¹ The **applicant** shall file an application for approval of the offer for sale of the newly-issued **securities** to the SEC Office with a complete set of evidentiary documentation as prescribed and notified by the SEC Office. The application shall be jointly prepared with a financial advisor whose name appears in the approved list of the SEC Office. The **applicant** shall pay the application fee to the SEC Office when the application form and the complete set of supporting documents and evidence are accurate and complete in accordance with the Licensing Manual for the Public at the rates prescribed in the *Notification of the Securities and Exchange Commission concerning the Determination of the Fees for the Application for Offer for Sale of Newly Issued Securities and the Application for the Approval of Securitization Projects*.

If the **applicant** intends to offer various types or issues of **securities** for sale, the **applicant** may include every type and issue of **securities** in one application.

If the **applicant** under Paragraph 1 intends to be a debtor in replacement of the **listed company** that is a debenture issuer, the **applicant** may apply for an approval for the offer for sale of the newly-issued debentures in the same application as detailed in Paragraph 2. In such case, the term “**securities**” in this Chapter shall include **debentures**.

Clause 6 The **applicant** will be granted an approval for an offer for sale of the newly-issued **securities** only after the following criteria are complied with:

(1) the **applicant** is:

(a) an **investment company** which is newly-incorporated by a **listed company** to accommodate the shareholding restructuring of the **listed company**; or

(b) a company the shares of which are listed securities on the **Stock Exchange** and is not subject to delisting in accordance with the rules of the **Stock Exchange**.

(2) the **applicant** is fully qualified in accordance with the criteria for the approval for an offer for sale of newly-issued **securities** as prescribed in the *Notification of the Capital Market Supervisory Board concerning the Application for Approval of the Offer for Sale of Newly Issued Securities*, subject to the type of **securities** for which approval is applied. In the case of (1)(a), the **applicant** shall be able to demonstrate that the **listed company** which incorporates the **investment company** is fully qualified in accordance with the provision in such notification. In the case of (1)(a), the **applicant** shall comply with the criteria prescribed in (4), (6) and (7), *mutatis mutandis*.

(3) the **applicant** shall be able to demonstrate that the **securities** for which approval is applied are qualified as follows:

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 33/2558 Re: Criteria for Offering for Sale of Newly-issued Securities with a Tender Offer for the Existing Securities of Listed Companies for Restructuring of Shareholding and Management (No. 2)* dated 10 July 2015 (effective on 20 July 2015).

(a) the features of the *securities* for which approval is applied are consistent with those of the *securities* issued by the *listed company* for which the *applicant* intends to make a tender offer, and the rights to which the *securities* holder will be entitled are not subordinated to those to which they were entitled.

(b) the *securities* meet the criteria prescribed in the *Notification of the Capital Market Supervisory Board concerning the Application for Approval of the Offer for Sale of Newly Issued Securities*, subject to the type of *securities* for which approval is applied, except in the case of *convertible securities*, in which case the criteria for the number of shares underlying *convertible securities* shall not apply.

(4) the *applicant* shall be able to demonstrate that the *listed company* has been informed of the preliminary approval from the *Stock Exchange* in relation to:

(a) the shareholding restructuring plan of such *listed company*;

(b) the *securities* for which approval is applied will be listed on the *Stock Exchange* in place of the existing *securities* of such *listed company*.

(5) in the case that the *applicant* or the *listed company* is subject to a law which contains a provision requiring that a shareholding restructuring shall be approved by a regulatory authority, the *applicant* shall be able to demonstrate that the *applicant* or *listed company* has duly obtained the approval of the shareholding restructuring plan from such regulatory authority.

(6) the *applicant* shall be able to demonstrate that the *listed company* served a notice calling a shareholders' meeting at least fourteen days prior to the meeting date, which contains the particulars prescribed and notified by the SEC Office. The *applicant* shall also be able to demonstrate that the financial advisor that provided an opinion on the shareholding and management restructuring plan in the notice calling the shareholders' meeting attended the shareholders' meeting to explain and give information to the shareholders.

(7) the *applicant* shall be able to demonstrate that the shareholders' meeting of the *listed company* resolved to approve the following matters with a vote of not less than three-quarters of the total number of shares of the shareholders attending the meeting and having the right to vote:

(a) shareholding restructuring and management plan of the *listed company*;

(b) any other plan in the restructuring procedure which requires the shareholders' prior approval at a meeting of the *listed company*, e.g. the plan for delisting the existing *securities* from the *Stock Exchange*, the plan for listing the *securities* for which approval is applied in place of the existing *securities* of such *listed company*, the plan for selling the assets of the *listed company* to the *applicant*, etc.

Clause 7¹ After the SEC Office receives the application and a complete set of evidentiary documentation in accordance with the Licensing Manual for the Public, the SEC Office shall conduct due diligence of the facts in accordance with the steps and procedures specified in the Licensing Manual for the Public and inform the *applicant* of any observation from the due diligence in order for the *applicant* to clarify that observation within ninety days from the date on which the SEC Office receives the application and a complete set of evidentiary documentation in accordance with the Licensing Manual for the Public.

If the *applicant* intends to apply for a waiver of the criteria under this Notification, the *applicant* shall apply for a waiver and submit any evidentiary documentation to the SEC Office before the SEC Office commences the consideration of the application for approval under Paragraph 1 in accordance with the steps and procedures specified in the Licensing Manual for the Public. The SEC Office shall complete the consideration of the application for a waiver within the same period as the consideration of the application for approval under Paragraph 1.

Clause 8² The SEC Office shall notify the result of the consideration of the application for approval within forty-five days from the date on which the SEC Office receives from the *applicant* the clarification of the observation from the due diligence.

Clause 9 The *applicant* shall complete the offer for sale of *securities* within six months from the date on which the approval is notified by the SEC Office. If the *applicant* cannot complete the offer for sale of *securities* within such period and intends to continue the offer for sale of *securities*, the approved person shall issue a letter to the SEC Office to request an extension of the offer period prior to the closing of that period and inform the SEC Office of the reasons and any material changes relating to the approved person.

In considering the request under Paragraph 1, the SEC Office shall have the authority to grant an extension of the offer period as it deems appropriate, provided that the total offer period shall not exceed one year from the date on which the approval is notified by the SEC Office. In granting such relaxation, the SEC Office may prescribe that the approved entity takes other action in the interest of the *securities* holders of the *listed company*.

If the approved person fails to complete the offer for sale of the *securities* within the offer period in Paragraph 1 or Paragraph 2, as the case may be, the approval granted shall expire upon the lapse of such period.

¹ Amended by the *Notification of the Capital Market Supervisory Board No. Tor Kor. 33/2558 Re: Criteria for Offering for Sale of Newly Issued Securities with a Tender Offer for the Existing Securities of Listed Companies for Restructuring of Shareholding and Management (No. 2)* dated 10 July 2015 (effective 20 July 2015).

Clause 10 The approved person shall comply with the approval conditions prescribed by the *Notification of the Capital Market Supervisory Board concerning the Application for Approval of the Offer for Sale of Newly Issued securities*, subject to the specific type of *securities* for which an approval for offer for sale has been granted.

Chapter 2

Filing of Registration Statement and Making a Tender Offer for Securities

Clause 11 Unless otherwise specified in this Chapter, the following Notifications of the Capital Market Supervisory Board shall be applicable to the filing of the registration statement under this Chapter, *mutatis mutandis*, as the case may be.

(1) *Notification of the Capital Market Supervisory Board concerning the Filing of the Registration Statement for Securities Offering;*

(2) *Notification of the Capital Market Supervisory Board concerning the Filing of the Registration Statement for Offers for Sale of Debt Instruments.*

Clause 12 In filing the registration statement, the approved person shall file the registration statement together with the tender offer for the *securities* using Form 69/247-1 which is available on the electronic system of the SEC Office, and the offeror shall comply with the criteria, conditions and procedures prescribed in this Chapter.

Clause 13 In the case that the approved person is an *investment company* under Clause 6(1)(a), the financial advisor that jointly prepares Form 69/247-1 shall not be related to or have any interest in the *listed company* as prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning the Approval of Financial Advisors and Scope of Work*, relating to the absence of relationships or interest of the financial advisors with or in a client or the impartiality in performing the duty as financial advisor.

Clause 14 Form 69/247-1 and the draft prospectus shall become effective from the day following the date on which the SEC Office receives the correct information and the documents relating to the offer period, the procedure for submission of the statement of intention to make a tender offer for *securities*, the procedure for delivery of *securities*, affixed with the signatures of every authorized person of the approved person.

Clause 15 The offeror shall make a tender offer for the entire *securities* of the *listed company*.

Clause 16 In addition to the provisions in Clause 17 to Clause 20, the criteria prescribed in the *Notification of the Securities and Exchange Commission No. Kor Jor. 53/2545 Re: Criteria, Conditions, and Procedures for the Acquisition of Securities for Business Takeovers* dated 18 November 2002 regarding the following matters shall be applicable to the tender offer for the *securities* in this Notification, *mutatis mutandis*:

(1) delivery of the tender offer to the *securities* holders and advertisement of the tender offer after filing the tender offer with the SEC Office;

(2) consent for the *securities* holders to cancel the statement of intention to sell their *securities*;

(3) determination of the offer period of the offeror and extension of the offer period;

(4) report on the number of *securities* tendered during the offer period and after the offer period;

(5) action to be taken in the case of an extension of the offer period, amendments to the tender offer, announcement of the final tender offer or announcement of the final offer period, and amendments to other details in the tender offer;

(6) action to be taken in the case that the tender offer is cancelled;

(7) requirements after the tender offer; and

(8) any other criteria in the *Notification of the Securities and Exchange Commission No. Kor Jor. 53/2545 Re: Criteria, Conditions, and Procedures for the Acquisition of Securities for Business Takeovers* dated 18 November 2002 prescribed and notified by the SEC Office for the additional compliance of the approved person.

Clause 17 The information in Form 69/247-1 shall be correct, accurate, and shall not conceal any material fact that should have been informed, nor contain any misleading statement that may have an impact on the decision of the *securities* holders to exchange the *securities* with the offeror.

Clause 18 When Form 69/247-1 becomes effective, the approved person shall purchase the *securities* within three business days of such date of effectiveness.

Clause 19 Amendments to the tender offer that affect the ratio or price of the *securities* that are offered for exchange shall only be made on the condition that the approved person is a company under Clause 6(1)(b) and that the proposed amendments have been approved by the shareholders' meeting of the approved person.

Clause 20 In the case that any of the following events occur, the approved person may cancel the tender offer for the *securities*, provided that such events for the cancellation is stated in Form 69/247-1:

(1) an event or act, which occurs after the SEC Office receives Form 69/247-1 and during the offer period and seriously damages or may potentially cause serious damage to the position or assets of the *listed company*, and such event or act is not attributable to any act of the approved person or an act for which the approved person shall be responsible;

(2) after the SEC Office receives Form 69/247-1 and during the offer period, the *listed company* carries out any act which causes a significant decrease in the share value; or

(3) if, after the closing of the offer period in Form 69/247-1, it appears that the number of shares tendered combined with the number of shares held by the approved person prior to making the tender offer does not meet the condition prescribed by the *Stock Exchange* in the preliminary approval in Clause 6(4).

Clause 21 If it is deemed necessary and expedient, the SEC Office shall have the authority to grant a waiver of compliance with Clause 16 or Clause 20 in order that the shareholding restructuring can be continued.

Chapter 3

Preparing an Opinion on the Business

Clause 22 The *listed company* shall prepare an opinion on the tender offer for the *securities* in accordance with the criteria prescribed in the *Notification of the Capital Market Supervisory Board concerning the Form and Period for Preparing an Opinion on a Tender Offer*, except in the case that the offeror is a company under Clause 6(1)(a), in which case the opinion on the reasonableness of the shareholding restructuring plan in Form 69/247-1 of the Board of Directors of the *listed company* and the financial advisor shall be deemed to be the opinion on the business in accordance with Section 250.

Chapter 4
Transitional Provisions

Clause 23 All notifications of the SEC Office and the *Stock Exchange*, and the orders and circulars that are issued or that prescribe the guidelines in accordance with the *Notification of the Securities and Exchange Commission No. Kor Jor. 6/2543 Re: Criteria for the Offering of Newly Issued Securities for Sale together with the Tender Offer for the Existing Securities of the Listed Company for Shareholding and Management Restructuring* dated 6 January 2000 which are in force prior to the effective date of this Notification shall remain in full force and effect to the extent that they are neither inconsistent with nor contrary to the provisions prescribed in this Notification, until the notifications, orders and circulars that are issued or that prescribe the guidelines in accordance with this Notification come into force and effect.

Clause 24 In the case of any reference to the *Notification of the Securities and Exchange Commission No. Kor Jor. 6/2543 Re: Criteria for the Offering for Sale of Newly Issued Securities together with the Tender Offer for the Existing Securities of the Listed Company for Shareholding and Management Restructuring* dated 6 January 2000 in other notifications, such reference shall mean a reference to this Notification.

Notified this 3rd day of August 2009.

(Mr. Vijit Supinit)
Chairman
Securities and Exchange Commission