

(UNOFFICIAL TRANSLATION)

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

**Notification of the Securities and Exchange Commission
No. Kor Jor. 3/2560
Re: Determination of Untrustworthy Characteristics of
Company Directors and Executives**

By virtue of Section 14, Section 89/3 and Section 89/6 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, the Securities and Exchange Commission hereby issues the following regulations:

Clause 1 The following notifications shall be repealed:

(1) *Notification of the Securities and Exchange Commission No. Kor Jor. 8/2553 Re: Determination of Untrustworthy Characteristics of Company Directors and Executives* dated 23 April 2010;

(2) *Notification of the Securities and Exchange Commission No. Kor Jor. 3/2559 Re: Determination of Untrustworthy Characteristics of Company Directors and Executives (No. 2)* dated 12 July 2016.

Clause 2 In this Notification:

“*company*,” “*subsidiary*,” and “*executive*” shall have the same definitions as prescribed in Chapter 3/1 of the *Securities and Exchange Act B.E. 2535 (1992)*;

“*financial institution*” means an entity which undertakes the following businesses:

- (1) commercial bank, finance business, credit foncier business;
- (2) securities business;
- (3) derivatives business;
- (4) insurance business;
- (5) government financial institution established under specific law;

“*deliberation procedure in court*” means a proceeding in court, whether conducted by either party with the court, or by one party with the other, or by the court with either or all parties, from the date of filing the charge with the court to the date on which the court issues the final judgement.

Clause 3 The characteristics deemed inappropriate to be entrusted with business management of a publicly held *company* fall into three cases as follows:

- (1) general untrustworthy characteristics as detailed in Clause 4;
- (2) untrustworthy characteristics on the ground of demeanors in the nature of offense pursuant to the *Securities and Exchange Act B.E. 2535 (1992)* prior to the *Amendment by the Securities and Exchange Act (No. 5) B.E. 2559 (2016)* as detailed in Clause 5, Clause 6 and Clause 7;

(3) untrustworthy characteristics previously specified before this Notification becomes effective as detailed in Clause 8.

Clause 4 A person having any of the following characteristics shall be deemed to have untrustworthy characteristics:

(1) being an insolvent person, an incompetent or a quasi-incompetent person;

(2) being banned from holding or resuming the position of director, manager, person with the managerial power, or advisor to a *financial institution* on the ground of having prohibited characteristics under the *Law on Supervision of Financial Institutions*, either Thai or foreign law, provided that such prohibited characteristics are related to any of the following matters:

(a) performing duties dishonestly, or engaging in dishonest, deceitful or fraudulent acts against assets;

(b) managing work in violation of law or in contrary to the order of the regulator, or managing or administering work inappropriately;

(c) acting in violation of law or acting unfairly or taking advantage of others.

(3) having been sentenced to imprisonment by the court's final judgment and it has not yet surpassed the three-year interval time after either the person completed the term of imprisonment or the period of sentence suspension ended, for any of the following offenses:

(a) an offense under Paragraph 2 of Section 281/2, Section 289 in conjunction with Section 90 (only in the case liable to public fraud) or Section 306 to Section 315 of the *Securities and Exchange Act B.E. 2535 (1992)*;

(b) an offense under Section 92 to Section 100, Section 125 in conjunction with Section 16 (only in the case liable to public fraud) or Section 145 to Section 150 of the *Derivatives Act B.E. 2546 (2003)*.

(4) having been sentenced to imprisonment by the court's final judgment and it has not yet surpassed an interval of three years after either the person completed the term of imprisonment or the period of suspension of imprisonment ended, provided that the action taken hereto shall be based upon the commission of public offences regarding deceitful, fraudulent or dishonest management of assets;

(5) having been subject to the court's final order of asset seizure for public revenue under *the Counter Corruption Act, the Anti-Money Laundering Act* or any other similar law and it has not yet surpassed an interval of three years after the date on which the court issued such order;

(6) having a demeanor constituting an offense under (3), which is a ground for the SEC Office to file a criminal complaint against such person with the inquiry official, and being under investigation by the inquiry official, or under consideration and prosecution of the public attorney, or the *deliberation procedure in court*.

The filing of a criminal complaint by the SEC Office under Paragraph 1 shall undergo the consideration reviewing procedure upon approval of the SEC Board.

Clause 5 A person having a demeanor in the nature of offense under Section 238, Section 240 to Section 243, Paragraph 1 of Section 281/2 and Section 281/10 of the *Securities and Exchange Act B.E. 2535 (1992)* prior to the *Amendment by the Securities and Exchange Act (No. 5) B.E. 2559 (2016)*, which is a ground for any of the following cases shall be deemed to have untrustworthy characteristics:

(1) imprisonment by the court's final judgement for an offense resulting in the accusation or legal proceeding initiated by any entity other than the SEC Office;

(2) a criminal fine as deemed appropriate by the Criminal Fining Committee and notified in writing;

(3) a criminal complaint filed by the SEC Office with the inquiry official.

Clause 6 A removal from work position in accordance with Section 89/4 or Section 89/6 of the *Securities and Exchange Act B.E. 2535 (1992)* on the ground of possessing untrustworthy characteristics under Clause 5 shall take effect during the following periods:

(1) a removal on the ground of imprisonment by the court's final judgement under Clause 5(1) shall commence when the court passes such final judgement, no matter if the imprisonment is suspended, and shall end after the imprisonment or the suspension thereof has surpassed an interval of three years;

(2) a removal on the ground of civil sanction recommended by the Civil Sanction Consideration Committee under Clause 5(2) shall commence upon delivery of a notifying letter regarding such matter until an interval of three years has surpassed after the end of the period specified by the SEC Office, which shall not exceed three years.

In specifying the period under Paragraph 1, the SEC Office shall take into consideration the factors specified under Clause 7;

(3) a removal on the ground of criminal complaint filed with the inquiry official under Clause 5(3) shall commence when the SEC Office files the complaint with the inquiry official until occurrence of any of the following cases:

(a) the public attorney issues a final order not to prosecute the case or the court issues a final judgement to dismiss the case;

(b) the imprisonment or suspension thereof has surpassed an interval of three years.

The criminal complaint filed by the SEC Office under Paragraph 1 shall undergo the consideration reviewing procedure upon approval of the SEC Board.

Clause 7 In specifying the period of possessing untrustworthy characteristics under Clause 6(2), the SEC Office shall take the following factors into consideration:

(1) roles, connection and demeanors of the person under consideration;

(2) punishment already served by the person;

(3) impacts or damage to the *company* or the overall shareholders or benefits related to the facts or demeanors under consideration;

(4) rectification or other actions beneficial to the *company* or the overall shareholders or the capital market as a whole to amend, remedy or prevent recurrence of similar facts or demeanors;

(5) other demeanors of the person under consideration which benefit or hinder the operation of the SEC Office;

(6) personal record or any past demeanors indicating inappropriateness to be director or *executive* of a *company*.

Clause 8 Any person subject to consideration of offense or being named in a written criminal complaint filed with the inquiry official, resulting in the possession of untrustworthy characteristics pursuant to the *Notification of the Securities and Exchange Commission No. Kor Jor. 8/2553 Re: Determination of Untrustworthy Characteristics of Company Directors and Executives* dated 23 April 2010, shall be deemed to have untrustworthy characteristics under this Notification, and such person shall be subject to removal from work position under Section 89/4 or Section 89/6 of the *Securities and Exchange Act B.E. 2535 (1992)* until completion of the removal period or the conditions specified under the said Notification.

Clause 9 Any reference in other notifications to the *Notification of the Securities and Exchange Commission No. Kor Jor 8/2553 Re: Determination of Untrustworthy Characteristics of Company Directors and Executives* dated 23 April 2010 or the *Notification of the Securities and Exchange Commission concerning Determination of Untrustworthy Characteristics of Company Directors and Executives* shall mean reference to this Notification.

Clause 10 This Notification shall come into force as from 16 February 2017.

Notified this 23rd day of January 2017.

- Signature -
(Mr. Voravidh Champeeratana)
Chairman
Securities and Exchange Commission