

(UNOFFICIAL TRANSLATION)

Codified up to No. 3

As of 28 September 2018

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 Office of Securities and Exchange Commission

No. Sor Jor. 19/2559

Re: Additional Rules on Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange that Offer for Sale of Newly Issued Securities in Thailand

By virtue of Section 81 of *the Securities and Exchange Act B.E. 2535 (1992)* together with Clause 16 and Clause 46 of *the Notification of the Capital Market Supervisory Board No. TorJor. 14/2558 Re: Rules on an Offer for Sale of Securities issued by Foreign Companies Holding or to Hold Shares Being Securities Exchanged in Foreign Securities Exchange* dated 9 April 2015, the SEC Office hereby issues the following regulations:

Clause 1 *The Notification of the Office of the Securities and Exchange Commission No. SorJor. 57/2552 Re: Additional Rules on Foreign Companies that Offer for Sale of Newly Issued Securities in Thailand* dated 17 November 2009 shall be repealed.

Clause 2 This Notification is an additional rule on the following matters, which shall be used together with the rules under the *Notification of the Capital Market Supervisory Board concerning Rules on an Offer for Sale of Securities Issued by Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange*:

(1) application for an offer for sale of newly issued securities and submission of the evidentiary documentation supplemented to the application under Clause 3 and Clause 4;

(2) report on the results of the public offering of securities in Thailand under Clause 5, Clause 6, Clause 7 and Clause 8.

Clause 3 Foreign companies wishing to offer for sale of newly issued securities shall file an application to obtain approval in accordance with the following criteria:

(1) in case where a foreign company has or will have the Stock Exchange of Thailand being as its primary market for sale of shares, the rules on application to obtain approval on an offer for sale of newly issued shares under the *Notification of the*

Capital Market Supervisory Board concerning Rules on an Offer for Sale of Securities Issued by Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange and the procedures for filing application to obtain approval shall be applied to the case, *mutatis mutandis*;

(2) in case where a foreign company has or will have the foreign securities exchange being as its primary market for sale of shares, the application to obtain approval shall be in accordance with the following criteria:

(a) in case of the initial public offering of shares so as to register shares to be a listed securities on the Stock Exchange of Thailand or the capital share offering of the listed companies, the application to obtain approval shall be filed via an electronic system of the Stock Exchange of Thailand arranged for the filing; provided however that it shall be in accordance with the following forms, as shown in electronic system as such, together with the evidentiary documentation supplemented to the application under Clause 4:

1. Form 35-FE-1 for the initial public offering of shares;
2. Form 35-FE-2 for any other cases apart from item 1.

(b) in case of an offer for sale of shares other than in Sub-clause (a) or an offer for sale of other securities, the application to obtain approval shall be filed by using a form provided on website of the SEC Office; provided however that it shall be the form specified in Sub-clause (a) 1. or 2., as the case may be, together with the evidentiary documentation supplemented to the application under Clause 4.

Clause 4 The evidentiary documentation supplemented to the application to obtain approval on an offer for sale of newly issued securities by a foreign company under Clause 3(2) shall be as follows:

(1) documents containing details in relation to a foreign company to offer securities with the same nature of form and list stipulated in the Registration Statement for Securities Offering under the *Notification of the Capital Market Supervisory Board concerning Rules on an Offer for Sale of Securities Issued by Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange*.

If a foreign company files the Registration Statement for Securities Offering and the draft prospectus together with filing application to obtain approval, it shall be deemed that the Registration Statement for Securities Offering submitted as such is an evidentiary documentation supplemented to the application filed by the company under Paragraph 1 above;

(2) documents indicating detail of directors, executives and controlling persons in relation to the following matters:

(a) name and surname (in case of changing name or surname, a previous name or surname must be indicated);

- (b) Identification Card Number or Passport number;
- (c) holding position as director or executive in other companies;
- (3) a copy of the shareholder meeting resolution approved the issuance of securities (if any);
- (4) a copy of the board of directors meeting resolution approved the issuance of securities (if any);
- (5) certificate of duty of financial advisor;
- (6) a copy of agreements to appoint other person to have an absolute power of management (if any);
- (7) a copy of the letter of appointment or the board of directors meeting resolutions in relation to appointing agent(s) of foreign companies in Thailand;
- (8) letter of certification from foreign companies to acknowledge duties and obligations after an offer for sale of shares, only for a case of the initial public offering of shares;
- (9) a copy of the letter showing that the initial public offering of securities, as applied for approval, has been performed legitimately and in accordance with the rules applicable to the said foreign company;
- (10) a copy of the letter of approval permitted to a capital increase by regulatory bodies supervising a business operation of the applicant (if any);
- (11)² financial statements of the applicant as follows:
 - (a) in the 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.
 - (b) 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 (if any);
- (12) other evidentiary documentation as identified in the Licencing Manual for the Public.

In case of having reasonable and appropriate ground or having limitations under other laws which enable a foreign company unable to submit information or evidentiary documentations in some items referred in Paragraph 1, a foreign company may submit requisition for a waiver of submitting such information or evidentiary

² Amended by the *Notification of the Office of Securities and Exchange Commission No. Sor Jor. 49/2561 Re: Additional Rules on Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange that Offer for Sale of Newly Issued Securities in Thailand* (No. 3) dated 28 September 2018 (effective on 1 November 2018).

documentation.

For deliberation of requisition for a waiver in Paragraph 2 above, the SEC Office shall regard to a necessity of submitting information or evidentiary documentations, as requested for a waiver, or other measures which is adequate and able to replace submission of such information or evidentiary documentation.

Clause 5 For the securities offering that a securities issuer has a duty to file the Registration Statement for Securities Offering and the draft prospectus, a securities issuer shall report the results of selling securities to the SEC Office in accordance with the following criteria:

(1)¹ in case of an offer for sale of securities issued by a foreign company which has or will have the Stock Exchange of Thailand being as its primary market for sale of shares, the rules on reporting the securities offering report of sale under the notifications of the Office of the Securities and Exchange Commission on Reporting the Result of Selling Securities to the Public shall be applied to the case, *mutatis mutandis*;

(2) in case of an offer for sale of securities issued by a foreign company which has or will have foreign securities exchange being as its primary market for sale of shares, it shall be in accordance with the rules in Clause 6, Clause 7 and Clause 8.

Clause 6 In case of an offer for sale of securities under Clause 5(2), a securities issuer shall report the securities offering report of sale to the SEC Office within forty five days as from the closing date of securities offering by giving detail according to Form 81-FE-1 as provided on website of the SEC Office.

Clause 7 In case of an offer for sale of warrants to purchase shares or other securities which may convert to shares, a foreign company under Clause 5(2) of an offer for sale of securities shall report the results of selling securities by using Form 81-FE-12 provided on website of the SEC Office and shall report within one of the following periods of time:

(1) within forty five days as from each expiry date of exercising period under the securities;

(2) within fifteen days as from the last day of each month on which the rights has been exercised, or as from the exercise date in case of exercising rights in a consecutive nature.

¹ Amended by *the Notification of the Office of the Securities and Exchange Commission No. SorJor.34/2560 Re: Additional Rules on Foreign Companies Holding or to Hold Shares Being Securities Traded on Foreign Securities Exchange that Offer for Sale of Newly Issued Securities in Thailand (No.2)* dated 29 June 2017 (effective on 16 July 2017).

Clause 8 In case of necessity where a securities issuer would not be able to submit the report as prescribed under Clause 6 or Clause 7 to the SEC Office within a specified period, the securities issuer may request a waiver in a written form to the SEC Office before expiration of the submission period by demonstrating reasons for request and specifying exact time when the report would be able to be submitted.

Clause 9 This Notification shall come into force as from 1 June 2016.

Notified this 29th day of April 2016.

(Mr. Rapee Sucharitakul)
Secretary-General
Office of Securities and Exchange Commission