

## SECURITIES AND EXCHANGE ACT

**B.E. 2535 (1992)\*\***

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BHUMIBOL ADULYADEJ, REX.,  
Given on the 12<sup>th</sup> day of March B.E. 2535;  
Being the 47<sup>th</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to enact a law on the securities and exchange;

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislative Assembly functioning as Houses of Parliament, as follows:

**Section 1.** This Act shall be called the “Securities and Exchange Act, B.E. 2535”.

**Section 2.**<sup>1</sup> This Act shall come into force after sixty days from the date of its publication in the Government Gazette, except Section 4, Section 7 to Section 16, Section 17 to Section 31, Section 262, Section 263, Section 318 to Section 320 and Section 332 which shall come into force as from the day following the date of its publication in the Government Gazette.

**Section 3.** The following shall be repealed:

- (1) The Securities Exchange of Thailand Act, B.E. 2517;
- (2) The Securities Exchange of Thailand Act (No. 2), B.E. 2527.

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\* Translated by Chandler and Thong'ek Law Office Limited, and reviewed by Prof. Phijaisakdi Horayangkura under contract for the Office of the Council of State of Thailand's Law for ASEAN project. -Initial Version – pending review and approval by the Office of the Council of State.

\*\* Securities and Exchange Act B.E. 2535 (1992), amended up until Securities and Exchange Act (No.4) B.E. 2551 (2008)

<sup>1</sup>Government Gazette, Volume 109/Part 22/Page 1/16 March 1992

**Section 4.** In this Act

“securities” means

- (1) treasury bills;
- (2) bonds;
- (3) bills;
- (4) shares;
- (5) debentures;
- (6) investment units which are instruments or evidence representing the rights to the property of a mutual fund;
- (7) warrants to purchase shares;
- (8) warrants to purchase debentures;
- (9) warrants to purchase investment units;
- (10) any other instruments as specified by the SEC.

“bills” mean any bills issued for raising funds from the public as prescribed by the notification of the SEC.

“debentures” mean any debt instruments of whatever name excluding bills, divided into units, each with equal value and an equal predetermined rate of return, issued by any company to a lender or purchaser, for representing the right of the holder of such instrument to receive money or other benefit.

“underwriter” means any person who underwrites the sale of securities to the public.

“prospectus” means any document issued for the purpose of inviting any person to subscribe or purchase the securities issued or offered for sale by the issuer or the seller.

“company”<sup>2</sup> means any limited company or public limited company including

- (1) public organization;
- (2) provincial administration organization, municipality, Bangkok Metropolitan, Pattaya City and any other local government organizations specified by law as a special local government organization;
- (3) unit or organization of foreign government, international organization and juristic person under law of foreign jurisdiction;
- (4) juristic person established by specific law; and
- (5) issuing entity established in any other forms as announced and prescribed by the SEC.

“securities company” means any company, or financial institution licensed to undertake securities business under this Act.

“securities business” means any of the following securities businesses:

- (1) securities brokerage;
- (2) securities trading;
- (3) investment advisory service;
- (4) securities underwriting;
- (5) mutual fund management;
- (6) private fund management;
- (7) other businesses relating to securities as specified by the Minister upon the recommendation of the SEC.

“securities brokerage” means brokering or representing any person in the purchase, sale or exchange of securities in the normal course of business in consideration of a commission, fee or other remuneration therefrom.

“securities trading” means a purchase, sale or exchange, outside the Securities Exchange or a securities trading centre, of securities, for one’s own account in the normal course of business.

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<sup>2</sup>Definition of “company” in Section 4 amended by the Securities and Exchange Act (No. 4) B.E. 2551

“investment advisor service” means giving advice in the normal course of business to the public whether directly or indirectly concerning the value of securities or the suitability of investing in those securities or the purchase or sale of any securities in consideration of a fee or other remuneration excluding the giving of advice to the public in the manner as prescribed by the notification of the SEC.

“securities underwriting” means the underwriting of all or part of the securities from a company or owner of securities for sale to the public in consideration of a fee or other remuneration whether with or without any condition.

“mutual fund management”<sup>3</sup> means the management of investment under a mutual fund project by issuing investment units of each project for sale to the public and using proceeds therefrom to invest in or acquire benefit from securities, futures contracts, other properties, or investing for profit or acquiring benefit by other means.

“private fund management”<sup>4</sup> means the management of funds of a person or group of persons who has authorized the management of investment to acquire benefit from securities, whether or not investment in other assets is also made, which management is conducted in an ordinary course of business, in consideration of a fee or other remuneration, excluding the management of investment as prescribed by the notification of the SEC.

“listed securities” means listed or authorized securities for trading in the Securities Exchange.

“competent official” means a person appointed by the Minister to execute the duties in accordance with this Act and whose name is published in the Government Gazette.

“Office” means the Office of the Securities and Exchange Commission.

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<sup>3</sup>Definition of “mutual fund management” in Section 4 amended by the Securities and Exchange Act (No. 3) B.E. 2546

<sup>4</sup>Definition of “private fund management” in Section 4 amended by the Securities and Exchange Act (No. 2) B.E. 2542

“Secretary-General” means the Secretary-General of the Office of the Securities and Exchange Commission.

“Minister” means the Minister in charge of the enforcement of this Act.

**Section 5.**<sup>5</sup> Unless otherwise specified by the provisions of this Act, in issuing a license and granting approval under this Act, the SEC, the Capital Market Supervisory Board, the Office, the board of directors of the Securities Exchange, and the Securities Exchange shall generally announce and prescribe the period for its consideration and issuance of order to be known by the public. When permission or approval is not granted, the applicant shall be notified of the reasons thereof.

**Section 6.** Where the signatures of the directors or registrar are required in securities certificates under this Act, the Capital Market Supervisory Board may specify that such signatures may be stamped by machine or by other means. In such event, the rules and procedures as prescribed by the notification of the Capital Market Supervisory must be complied with.

[“Capital Market Supervision Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 7.** The Minister of Finance shall be in charge of the enforcement of this Act and shall have the power to issue ministerial regulations and appoint competent officials to perform duties in accordance with this Act.

Such ministerial regulations shall come into force upon publication in the Government Gazette.

## CHAPTER 1 SUPERVISION OF SECURITIES AND EXCHANGE

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<sup>5</sup>Section 5 amended by the Securities and Exchange Act (No. 4) B.E. 2551

DIVISION 1  
Securities and Exchange Commission

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**Section 8.**<sup>6</sup> There shall be Securities and Exchange Commission hereby referred to as the “SEC” shall be established, consisting of one Chairperson appointed by the Cabinet upon the recommendation of the Minister, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Commerce, the Governor of the Bank of Thailand and not fewer than four but not exceeding six qualified members appointed by the Minister under selection in accordance with Section 31/7 as commission members, among whom there shall be at least one legal expert, one accounting expert and one financial expert. The Secretary-General shall be a commission member and the secretary of the SEC.

**Section 9.**<sup>7</sup> The SEC Chairperson and qualified members appointed in accordance with Section 8 shall hold Thai nationality and shall not be under any of the following prohibitions:

- (1) being an incompetent or quasi-incompetent person;
- (2) being or having been bankrupt;
- (3) having been sentenced by a final judgment to imprisonment, regardless of whether the sentence has been suspended, except for the offences committed through negligence or petty offence;
- (4) being or having been a person holding political position or any position in a political party, except such person vacates office for not less than one year;
- (5) being an officer or an employee of the Office; or
- (6) being a manager or a person with power of management of the securities business, the Securities Exchange, securities trading centre, organization related to securities business, futures trading business, futures trading centre, futures clearing house, futures trading operators regulatory association or any other companies which are under the supervision or the SEC, the Capital Market Supervisory Board or the Office.

Where a person under (5) or (6) is appointed, the appointed person shall perform duty only after having resigned from the position under (5) or (6), which shall be

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<sup>6</sup> Section 8 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>7</sup> Section 9 amended by the Securities and Exchange Act (No. 4) B.E. 2551

within thirty days from the date of appointment. If the appointed person fails to resign within the said period, it shall be deemed that such person has never been appointed as the Chairperson or qualified member, under the circumstance of which, there shall be an appointment of another person as replacing Chairperson or qualified member, as the case may be.

**Section 10.**<sup>8</sup> The Chairperson and qualified members appointed in accordance with Section 8 shall hold office for a term of four years and may be re-appointed, but shall not hold office for more than two consecutive terms.

Upon the expiration of the term of office, the appointment of new Chairperson and qualified members shall be made within sixty days. During the period when the new appointment has not been made, the retiring Chairperson or qualified members, as the case may be, shall remain in office until their successors assume their duties.

**Section 11.**<sup>9</sup> In addition to vacation of office upon the expiration of term, the Chairperson and qualified members appointed in accordance with Section 8 shall vacate office upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of seventy years;
- (4) being under any prohibition as provided in Section 9; or
- (5) the Cabinet resolution upon the recommendation of the Minister in

case of the Chairperson of the SEC, or by the Minister's order upon the recommendation of the SEC passing a resolution with at least two-thirds of all members of the SEC in case of a qualified member, provided that the resolution and order shall state clear reasons therefor.

If the office of the Chairperson or a qualified member is vacated prior to the expiration of the term of office, the Cabinet may appoint another person to hold the office of the Chairperson or the Minister may appoint another person to hold the office of such commission member, as the case may be. The appointed Chairperson or qualified member shall retain office for the remaining term of the Chairperson or qualified member whom he replaces.

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<sup>8</sup> Section 10 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>9</sup> Section 11 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 12.** At least half of the members of the SEC present at the meeting shall form a quorum.

In the meeting of SEC, when the Chairperson of the SEC is absent from the meeting or is unable to perform his duty, if there is a Vice-Chairperson, the Vice-Chairperson present at the meeting shall be the Chairperson of the meeting. If there is no Vice-Chairperson or there is a Vice-Chairperson but he is absent from the meeting or is unable to perform his duty, the members of the SEC present at the meeting shall elect one amongst themselves to preside over the meeting.

Decisions of the meeting shall be made by majority of votes. Each member of SEC shall have one vote. In the event of a tied vote, the Chairperson of the meeting shall have an additional vote as the casting vote.

**Section 13.**<sup>10</sup> Any member of the SEC, who has an interest in the matter to be considered, shall declare such interest and shall be prohibited from participating in such consideration.

Guidelines for consideration of the interest under the first paragraph shall be as specified by the SEC.

**Section 14.** The SEC shall have authority to formulate policies to promote and develop, as well as to supervise, matters concerning securities, securities businesses, the Securities Exchange, securities trading centre, and related businesses, organizations related to securities business, issuance or offer of sale of securities to the public, holding of securities for business takeover, and prevention of unfair securities trading practices. Such authority shall include:

- (1) the issuance of rules, regulations, notifications, orders, or requirements under this Act;
- (2) the determination of fees for application for permission, application for obtaining a license, a license, or for operating the business as licensed;
- (3) the issuance of rules relating to the performance of duties of a sub-committee;
- (4) the issuance of rules, orders and regulations relating to personnel, personnel relations system, placement, appointment, dismissal and discipline for personnel

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<sup>10</sup> Section 13 amended by the Securities and Exchange Act (No. 4) B.E. 2551



and employees of the Office, the determination of salary and other remuneration as well as assistance and welfare;

(4/1)<sup>11</sup> the prescription of rules for use as guidelines for consideration of problems, which may arise from the enforcement of this Act: and

(5) any other operation in line with the objectives of this Act.

All rules, regulations, notifications, orders, or requirements which are generally applicable shall come into force upon publication in the Government Gazette.

**Section 14/1.**<sup>12</sup> There shall be an Audit Committee appointed by the SEC, consisting of not fewer than three but not exceeding five members, among whom there shall be at least two qualified members of the SEC.

The Audit Committee shall appoint an officer of the Office as the secretary of the Audit Committee.

**Section 14/2.**<sup>13</sup> The Audit Committee shall have the following authorities:

(1) re-examining and giving opinion to the SEC concerning the internal control system;

(2) reviewing the financial report and financial information of the Office;

(3) coordinating with the Office of the Auditor General of Thailand in the matter of auditing the financial statement;

(4) re-examining and reviewing the compliance with rules;

(5) supervising the internal audit unit; and

(6) performing any other duties as assigned by the SEC.

In the execution of the duties under the first paragraph, the Audit Committee shall report to the SEC.

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<sup>11</sup> Section 14 (4/1) added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>12</sup> Section 14/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>13</sup> Section 14/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 15.**<sup>14</sup> The SEC shall have the power to appoint a sub-committee to perform any matter as assigned by the SEC.

The provisions of Section 12 shall apply to the meeting of the sub-committee *mutatis mutandis*.

**Section 16.** The Chairperson, members of the SEC and members of the sub-committees shall receive remuneration as specified by the Minister. The remuneration shall be deemed an expense of the operation of the Office.

#### DIVISION 1/1

#### The Capital Market Supervisory Board<sup>15</sup>

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**Section 16/1.**<sup>16</sup> The Capital Market Supervisory Board shall be established, comprising the Secretary-General as Chairperson, a Deputy Secretary-General as assigned by the Secretary-General, the Director-General or a Deputy Director-General of the Fiscal Policy Office as assigned by the Director-General and not exceeding four qualified members appointed by the Minister through selection process in accordance with Section 31/7. In this regard, at least two qualified member shall have experience in managing the company whose securities are listed on the Securities Exchange or the securities company.

The Secretary-General shall appoint an officer of the Office to be the secretary of the Capital Market Supervisory Board.

**Section 16/2.**<sup>17</sup> Each qualified member appointed by the Minister shall hold Thai nationality and shall not be under any prohibition provided in Section 9 and shall not be a director, a manager, a person with power of management, an officer, an employee, an advisor or any other positions of securities business, the Securities Exchange, securities trading centre, organization related to securities business, futures trading business, futures trading centre, futures clearing house, futures operators regulatory association or any other

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<sup>14</sup> Section 15 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>15</sup> Division 1/1 The Capital Market Supervisory Board, Sections 16/1 through 16/8 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>16</sup> Section 16/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>17</sup> Section 16/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

companies which are under the supervision of the SEC, the Capital Market Supervisory Board or the Office.

The qualified member as appointed by the Minister who is under any prohibition as provided in Section 9(5) or under the first paragraph shall resign from a position as provided in Section 9(5) or under the first paragraph, as the case may be, within thirty days from the date of appointment. If such person fails to resign within the said period, it shall be deemed that such person has never been appointed as the qualified member, and there shall be an appointment of another person as the qualified member.

**Section 16/3.**<sup>18</sup> The qualified members appointed by the Minister in accordance with Section 16/1 shall hold office for a term of four years and , upon the expiration of the term of office, may be reappointed but shall not hold office for more than two consecutive terms. When two years of the first term of office have elapsed, half of the members of the board shall be vacated by means of drawing lots. Vacation from the office by means of drawing lots shall be deemed vacation upon the expiration of the term of office.

Upon the expiration of the term of office of the qualified members, the Chairperson of the SEC jointly with the Secretary-General shall propose the list of qualified persons to the Selection Committee within sixty days to follow the provision of Section 31/7. In this regard, the retiring qualified members shall remain in office until their successors assume their duties.

The provisions of Section 12 and Section 13 shall apply to the meeting of the Capital Market Supervisory Board *mutatis mutandis*.

**Section 16/4.**<sup>19</sup> Apart from the retirement upon the expiration of the term of office, the qualified member under section 16/1 shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of seventy years;

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<sup>18</sup> Section 16/3 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>19</sup> Section 16/4 added by the Securities and Exchange Act (No. 4) B.E. 2551

(4) the Minister's order upon the recommendation of the SEC passing a resolution with a vote of at least two-thirds of all board members, provided that the order shall state clear reasons thereof; or

(5) being under any of prohibitions as provided in Section 16/2.

If the office of a qualified member appointed by the Minister is vacated prior to the expiration of the term of office, the Minister may appoint another person to hold the office of such qualified member. The appointed qualified member shall retain office for the remaining term of the qualified member whom he replaces.

**Section 16/5.**<sup>20</sup> Members of the Capital Market Supervisory Board shall prepare reports on their securities holding as well as the holdings of securities by their spouses and minor children for submitting to SEC in accordance with the rules and time period as prescribed by the SEC.

**Section 16/6.**<sup>21</sup> The Capital Market Supervisory Board shall have the authority to act in compliance with this Act and other laws, and shall be responsible to the SEC.

The authorities of the Capital Market Supervisory Board under the first paragraph shall include:

(1) issuance of rules, regulations, notifications, orders or requirements on securities business operations, issuance and offer for sale of securities, Securities Exchange, Securities Depository Centre, Clearing House, Securities Registrar, associations related to securities business and the holding of securities for a business takeover;

(2) reporting on the result of operation periodically to the SEC according to the rules, conditions and procedures as specified by the SEC; and

(3) any other operation as assigned by the SEC or in line with the objectives of this Act.

**Section 16/7.**<sup>22</sup> The Capital Market Supervisory Board shall have the power to appoint a sub-committee to perform any act as assigned by the Capital Market Supervisory Board.

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<sup>20</sup> Section 16/5 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>21</sup> Section 16/6 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>22</sup> Section 16/7 added by the Securities and Exchange Act (No. 4) B.E. 2551

The provisions of Section 12 shall apply to the meeting of the sub-committee, *mutatis mutandis*.

**Section 16/8.**<sup>23</sup> Members of the Capital Market Supervisory Board and the sub-committee shall receive remuneration as specified by the SEC, which shall be deemed an expense of the operation of the Office.

## DIVISION 2

### The Office of the Securities and Exchange Commission

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**Section 17.** There shall be an establishment of an Office called the “Office of the Securities and Exchange Commission” which shall be a juristic person.

**Section 18.** The Office shall have its head office in Bangkok or a nearby province. The Office may establish its branches or representative offices at any other place.

**Section 19.**<sup>24</sup> The Office shall have the following authorities:

- (1) Operate in compliance with resolutions of SEC;
- (2) Supervise the compliance with laws and law enforcement to any offender under this Act;
- (3) Determine the fees for filing of form declaring information on offer for sale of securities, annual information filing, registration and filing of other applications;
- (4) Accept fees; and
- (5) Perform other works under the provisions of this Act or under other laws.

**Section 20.**<sup>25</sup> The Cabinet, upon the recommendation of the Minister as advised by the SEC, shall appoint the Secretary-General who shall hold office for a term of four years and may be re-appointed, but who shall not be appointed to hold office for more than two consecutive terms.

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<sup>23</sup> Section 16/8 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>24</sup> Section 19 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>25</sup> Section 20 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 21.** The Secretary-General shall have qualifications and not be under prohibition as follows:

- (1) being able to work full time for the Office;
- (2) not being or having never been bankrupt;
- (3) not being a political official, an elected member of a local assembly or a local administrator, or a member or official of any political party;
- (4) not being a government official holding a permanent position or receiving salary, or an officer or employee of any state enterprise or other government agencies or local administration; or
- (5) not holding a position or any duty or having an interest in a securities company.

**Section 22.** In addition to vacation of office at the expiration of term, the Secretary-General shall vacate office upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of sixty years;
- (4) lack of qualifications or being under any prohibition as provided in Section 21; or
- (5)<sup>26</sup> Cabinet resolution, upon the recommendation of the Minister as advised by the SEC, due to gross deficiency in performing duty or incompetence, provided that the resolution shall clearly state reasons thereof.

**Section 22/1.**<sup>27</sup> Within two years from the date of vacation, the Secretary-General shall not undertake any business or work for any entrepreneur, organization or company, or hold a position as prescribed in the first paragraph of Section 16/2.

In determining the salary and other remuneration of the Secretary-General, the prohibition on career under the first paragraph shall be taken into consideration.

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<sup>26</sup> Section 22 (5) amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>27</sup> Section 22/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 23.** The Secretary-General shall supervise the officers and employees and shall be responsible for operation of all businesses of the Office.

In operation of the business, the Secretary-General shall be responsible to the SEC.

**Section 24.** The Secretary-General shall be a representative of the Office in any business of the Office relating to third persons, and for this purpose the Secretary-General may authorise an agent or any person to perform a specific act on his behalf.

**Section 24/1.**<sup>28</sup> To preserve the public interest or to protect investors, the Office or the person designated in writing by the Office shall have the power to disclose information concerning issuance or offer for sale of securities, issuing or offering company, securities company, Securities Exchange, securities trading centre, organizations related to securities business, committing of offences and punishment of offenders or any other information obtained as a result of implementation of this Act.

**Section 25.** The initial capital of the Office shall comprise the money transferred under Section 319 and Section 320.

**Section 26.** The Office shall provide reserves in accordance with the rules and procedures as prescribed by the SEC with the approval of the Minister.

**Section 27.** All fees prescribed in the ministerial regulations and other fees received by the Office, and other income derived from operations of the SEC and the Office shall be vested in the Office. After deducting the expenses and reserves under Section 26, any remaining amount therefrom shall be remitted to the state as the State revenue.

**Section 28.**<sup>29</sup> Vacation of office of an officer of the Office and including vacation of office due to retirement shall comply with the regulations prescribed by the SEC.

Where there is a reasonable ground, the SEC shall, after considering the position and nature of work for which the officer is responsible prior to vacation of the office, or duties in the Office, have the power to issue regulations requiring that Section 22/1 shall apply to such officer, *mutatis mutandis*.

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<sup>28</sup> Section 24/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>29</sup> Section 28 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 29.** The labor protection law in respect of payment of compensation and payment of contribution to the Compensation Fund, the labor relations law and the law governing state enterprises employees relations shall not apply to the Secretary-General, officers and employees of the Office.

**Section 29/1.**<sup>30</sup> In execution of this Act, the Chairperson of the SEC, the members of the SEC, the members of the Capital Market Supervisory Board and the Secretary-General shall be an official under the Criminal Code.

**Section 30.** The Office shall establish an accounting system suitable for business of the Office, and shall provide a regular internal audit.

**Section 31.** The Office of the Auditor General of Thailand shall audit accounts of the Office and, submit report on results of the audit to the Minister within ninety days from the end of the fiscal year.

**Section 31/1.**<sup>31</sup> The Office shall prepare the annual report showing the financial status and business standing and submit such report to the Minister within one hundred and twenty days from the end of the fiscal year.

**Section 31/2.**<sup>32</sup> The Office shall prepare a three-year operation plan and the explanation on important plans to be implemented, and submit such plan to the Minister.

### DIVISION 3 The Selection Committee<sup>33</sup>

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**Section 31/3.**<sup>34</sup> When it is necessary to appoint a qualified member in the SEC or in the Capital Market Supervisory Board, the Minister shall appoint the Selection

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<sup>30</sup> Section 29/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>31</sup> Section 31/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>32</sup> Section 31/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>33</sup> Division 3 The Selection Committee, Section 31/3 through Section 31/7 added by the Securities and Exchange Act (No. 4) B.E. 2551



Committee comprising seven members to nominate the qualified persons to be a member of the SEC or the Capital Market Supervisory Board.

The Selection Committee under the first paragraph shall be appointed from the persons who had held offices of the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Commerce, the Secretary-General of the Council of State, the Secretary-General of the Office of the National Economic and Social Development Board, the Governor of the Bank of Thailand, the Secretary-General of the Office of the Securities and Exchange Commission, or the qualified members in the SEC.

A Selection Committee member shall not be a political official, a member of the House of Representatives or a member of the Senate, and shall not have an essential benefit or interest in implementing of this Act at the time he is appointed and performs his duty.

The Selection Committee under the first paragraph shall elect one member of committee to be its Chairperson.

The Selection Committee shall receive remuneration from the Office as specified by the Minister, which shall be deemed an expense of the operation of the Office.

**Section 31/4.**<sup>35</sup> The Selection Committee shall prescribe the rules governing nomination, consideration and selection of qualified members in the SEC or in the Capital Market Supervisory Board within thirty days from the date they are appointed. The rules shall at least require the prescription of information relating to knowledge and experience of the qualified persons beneficial for performance of duties in office for which a qualified person is nominated, sufficient for the Selection Committee to proceed with the selection.

The rules under the first paragraph shall be approved by the Minister and shall continue to be in effect although the Selection Committee prescribing such rules vacated office.

Amendment to, cancellation of, the rules or prescription of new rules may be made only by the resolution of the Selection Committee with a vote of not less than two-thirds of all committee members, and shall be in effect upon approval of the Minister.

The Selection Committee shall disclose the rules so prescribed under this Section in a manner that is accessible to the public.

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<sup>34</sup> Section 31/3 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>35</sup> Section 31/4 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 31/5.**<sup>36</sup> The entire Selection Committee shall vacate office when the selection and the appointment of qualified members in the SEC or in the Capital Market Supervisory Board have been completed, for which the Selection Committee is appointed to proceed with the selection by that time.

**Section 31/6.**<sup>37</sup> At least two-thirds of members of the Selection Committee present at the meeting shall form a quorum.

The provisions of Section 12 shall apply to meetings of the Selection Committee *mutatis mutandis*.

**Section 31/7.**<sup>38</sup> In selecting the qualified members, the Chairperson of the SEC and non-qualified members in case of the SEC, or the Chairperson of the SEC and the Secretary-General in case of the Capital Market Supervisory Board, shall jointly propose to the Selection Committee names of the qualified persons twice the number of the qualified members to be appointed. After the Selection Committee selects the proper qualified persons as the members in the said Commission and the Board, those names shall be submitted to the Minister for appointment.

In case where the Selection Committee disapproves the proposed names of qualified persons under the first paragraph, the Selection Committee shall have the power to have new names proposed.

## CHAPTER 2

### ISSUANCE OF SECURITIES OF COMPANY

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#### DIVISION 1

#### Permission for Offer for Sale of Newly Issued Securities

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<sup>36</sup> Section 31/5 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>37</sup> Section 31/6 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>38</sup> Section 31/7 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 32.** No promoters of a public limited company shall offer newly issued shares for sale to the public or any person, unless permission is obtained from the Office and Section 65 has been satisfied.

The application for permission under the first paragraph shall only be made when such promoters have registered the memorandum of association in accordance with the law governing public limited companies.

**Section 33.**<sup>39</sup> No company shall offer the sale of newly issued securities in the category of shares, debentures, bills, warrants to purchase shares, warrants to purchase debentures, and any other securities as specified by the SEC, unless:

- (1) it is an offer for sale of securities which falls within Section 63;
- (2) permission is obtained from the Office and Section 65 is satisfied; or
- (3) it is an offer for sale of the whole newly issued securities by a public limited company to its shareholders in proportion to shares held, provided that full payment for value of the shares offered for sale has been received from the shareholders.

**Section 34.**<sup>40</sup> An offer for sale of newly issued shares by a limited company under the Civil and Commercial Code, whether made by a limited company issuing such shares or its shareholders, shall not be made generally or to a wide circle of persons, unless exemption is granted, or rules, conditions and procedures prescribed by the notification of the Capital Market Supervisory Board have been satisfied.

**Section 35.** An application for offer for sale of newly issued securities and the permission under Section 32, Section 33 and Section 34 shall be in accordance with the rules, conditions and procedures prescribed by the notification of the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may announce and prescribe details of the following matters:

- (1) debt to equity ratio;
- (2) period for the offer for sale of securities;
- (3) subscription, underwriting and distribution of securities;
- (4) Receipt of payment and delivery of securities;

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<sup>39</sup> Section 33 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>40</sup> Section 34 amended by the Securities and Exchange Act (No. 4) B.E. 2551

(5) Keeping and practice concerning payment for the subscription of securities; and

(6) Other conditions necessary for protecting benefits of investing people.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 36.** In considering the application for permission, the Office shall notify the applicant of the result of consideration within forty-five days from the date of receipt of the application together with the correct and complete documents under Section 35.

**Section 37.** The provisions of the Civil and Commercial Code prohibiting the issuance of debentures by a limited company shall not apply to a limited company which has been granted the permission to issue debentures under Section 34.

**Section 38.** The provisions of Section 654 of the Civil and Commercial Code shall not apply to securities in the category of debentures and bills which may be offered for sale in accordance with Section 33 and Section 34.

## DIVISION 2 Debentures

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**Section 39.** The par value of a debenture of a company shall not be less than one hundred baht which shall be paid in money and the purchaser cannot make a set-off with the company.

**Section 40.** A debenture certificate shall contain at least the following particulars:

- (1) name of the company;
- (2) registration number of the company and the date on which the Registrar accepts for registration of the company;
- (3) amount of money for which the debentures issued;
- (4) name of debenture-holder or statement that it is a bearer debenture;

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- (5) type, value, serial number, number and amount of debentures issued, interest rate as well as repayment period;
- (6) method, time and place for payment of interest on debenture and redemption;
- (7) rights of the debenture holder in case the company incurred debt before issuing the debenture;
- (8) procedures for the conversion of rights (if any);
- (9) signature of authorized director who signs to bind the company or debenture registrar;
- (10) date of issuance; and
- (11) other particulars as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

### DIVISION 3

#### Issuance of Secured Debentures

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**Section 41.** In applying for permission under Section 33 or Section 34 to issue secured debentures, the applicant shall also:

- (1) submit draft terms and conditions stating rights and duties of the debenture issuer and the debenture holders;
- (2) submit a draft agreement on appointment of the debenture holders’ representative;
- (3) request to a person having qualifications as prescribed by the notification of the Capital Market Supervisory Board to be a debenture holders’ representative; and
- (4) undertake any other acts as prescribed by the notification of the Capital Market Supervisory Board.

In case where a public limited company is to offer newly issued secured debentures for sale to its shareholders, which permission is not required under Section 33, such public limited company shall also proceed with the first paragraph prior to offer for sale of debentures.

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[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 42.** The terms and conditions stating the rights and duties of the debenture issuer and debenture holders shall contain at least the following particulars:

- (1) rights and conditions under the debenture;
- (2) return arising from the debenture;
- (3) property used as collateral or other collateral;
- (4) appointment, powers and duties of the debenture holders’ representative;
- (5) conditions for change in the debenture holders’ representative;
- (6) consent of debenture holders permitting the secured-debenture issuer to appoint a debenture holders’ representative approved under Section 41(3);
- (7) representation of the secured-debenture issuer to mortgage, pledge or provide other collateral against the debenture within the time specified in Section 44;
- (8) procedures for, time and place of payment of debt;
- (9) procedures for the conversion of rights (if any); and
- (10) other particulars as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 43.** The agreement on appointment of a debenture holders’ representative shall contain at least the following particulars:

- (1) powers and duties of the debenture holders’ representative in acceptance of mortgage, pledge or other collateral, exercise of rights to enforce such collateral, or in causing the secured-debenture issuer to comply with the terms and conditions made with the debenture holders, including claims for damages;
- (2) rates and method of payment of remuneration and gratuity to the debenture holders’ representative;and
- (3) other particulars as prescribed by the notification of the Capital Market Supervisory Board.

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[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 44.** When the issuer of secured debentures has offered the secured debentures for sale to its shareholders, the public or any person, the debenture issuer shall have the rights and duties under the terms and conditions under Section 41(1) and as provided for in this Act. The issuer of secured debentures shall, with the consent of debenture holders, appoint a representative of debenture holders and place a mortgage, pledge or other collateral with the representative of debenture holders within seven days from the closing date of the offer for sale.

**Section 45.** The representative of debenture holders shall have the power to act in his own name for the benefit of all debenture holders in accepting a mortgage, pledge or other collateral, exercising rights to enforce collateral and causing the issuer of secured debentures to comply with the terms and conditions made with debenture holders, including claims for damages.

The act of the representative of debenture holders in the first paragraph shall be deemed to be the act directly performed by the debenture holders.

**Section 46.** The Capital Market Supervisory Board shall have the power to announce and prescribe rules, conditions and procedures for a representative of debenture holders to act according to his or her powers and duties.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 47.** In addition to the duties as specified in the appointment agreement, a representative of debenture holders has the duty to take care of benefits of the debenture holders.

In case where the representative of debenture holders acts, omits to act, or neglects to perform his duties as provided in the first paragraph, causing damage to debenture holders, any debenture holder or the Office has the right to file a claim with the court against the representative of debenture holders for the benefit of the debenture holders as a whole.

In case where a claim has been filed with the court by a debenture holder, such debenture holder shall hold not less than ten per cent of all the secured debentures

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sold or be appointed by other debenture holders who collectively hold not less than ten per cent of all the secured debentures sold.

**Section 48.** In case the representative of debenture holders commits an offence relating to property under the provisions of Chapter 1, Chapter 3, Chapter 4, Chapter 5 or Chapter 7 of Title 12, of the Criminal Code, the Office shall be deemed an injured party under the Criminal Procedure Code.

In the event under the first paragraph, the public prosecutor shall, after having brought the criminal case to court, have the power to claim restitution of property or value thereof or damages on behalf of the injured person. For this purpose, the provisions concerning the filing of civil cases related to a criminal case under the Criminal Procedure Code shall apply, *mutatis mutandis*.

**Section 49.** In issuing any type of debentures other than secured debentures, if the debenture issuer intends to arrange for a representative of debenture holders, the debenture issuer shall declare its intention at the time of applying for issuance of the debentures. The provisions of Section 41, Section 42, Section 43, Section 44, Section 45, Section 46, Section 47 and Section 48, including related penalty provisions, shall apply *mutatis mutandis* to the application for permission, the preparation of terms and conditions, and the agreement on appointment of a representative of debenture holders, the powers and duties of the representative of debenture holders, including the filing of a case in court against the representative of debenture holders.

#### DIVISION 4

#### Register and Transferability

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**Section 50.** The company which issues debentures, warrants to purchase shares, or warrants to purchase debentures in accordance with Section 33 or Section 34 shall be required to keep a register of such securities holders in accordance with the rules and procedures as prescribed by the notification of the Office.

**Section 51.** The transfer of named debentures, named warrants to purchase shares, or warrants to purchase debentures issued in accordance with Section 33 or Section 34 shall be valid upon the delivery of such securities certificates to a transferee,

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with the endorsement of transfer by a person having his name as the owner or by the last transferee.

**Section 52.** Any person possessing a named debenture certificate, a named warrants to purchase shares, or a named warrants to purchase debentures issued in accordance with Section 33 or Section 34 with the endorsement of transfer in accordance with Section 51, shall be presumed to be the owner of such securities.

**Section 53.** The transferee of named debentures, or named warrants to purchase shares, or named warrant to purchase debentures issued in accordance with Section 33 or Section 34, who intends to register such transfer, shall submit the application to the company which issues securities or the registrar together with the securities certificates which he has signed his name as the transferee on the back of the certificates. In such event, the issuing company or the registrar, as the case may be, shall enter the transfer in the register and certify such transfer on the securities certificates or issue new certificates within the time as prescribed by the notification of the Office, unless such transfer of securities is against the law or against the restrictions on transfer of the issuing company which has registered such restrictions with the Office.

When the issuing company or the registrar has received the application for transfer in accordance with the first paragraph, such transfer shall be effective against the issuing company but shall be effective against a third party only when the transfer has been entered into the register.

**Section 54.** No company which issues securities shall provide any benefit to a person other than the person whose name is entered in the securities register in accordance with Section 53, except in case of bearer debentures, where the benefit shall be provided when the bearer has submitted the bearer certificates to the issuing company. In such event, the payment shall also be endorsed by the issuing company.

**Section 55.** The transfer of bearer debentures, bearer warrants to purchase shares or bearer warrants to purchase debentures issued in accordance with Section 33 or Section 34 shall be valid upon the delivery of such securities certificates to the transferee.

## DIVISION 5

### Disclosure of Information and Auditor

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**Section 56.** A company which issues securities in accordance with Section 32, Section 33 or Section 34 shall prepare the following financial statements and reports concerning the financial condition and the business standing of the company and submit them to the Office:

- (1) quarterly financial statement reviewed by an auditor;
- (2) financial statement for any accounting period examined and opined by an auditor;
- (3) annual report; and
- (4) report on disclosure of any other information prescribed by the notification of the Capital Market Supervisory Board.

The financial statements and reports under the first paragraph shall comply with the rules, conditions and procedures as prescribed by the notification of the SEC. In prescribing such rules, conditions and procedures, the standards approved by the Board of Auditing Practices in accordance with the law relating to auditors shall be taken into account.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 57.** A company which issues securities in accordance with Section 32, Section 33 or Section 34 shall submit a report with reasons to the Office immediately upon occurrence of the following events:

- (1) the company suffers serious damage;
- (2) the company ceases to operate all or part of its business;
- (3) the company changes its objective or nature of its business;
- (4) the company enters into an agreement entrusting other persons with power in whole or in part in the management of the company;
- (5) the company acts or is acted in a manner in which it takes over or is taken over the business under Section 247; or
- (6) any event which affects or is likely to affect the rights and interests of securities holders or the decision on investment or the change in the securities price of the company as prescribed by the notification of the Office.

**Section 58.** In case where the Office considers that the documents or reports furnished by the company which issues securities under Section 32, Section 33 or

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Section 34 are incomplete or ambiguous, or in case of emergency or any other case which is likely to affect the rights and interests of securities holders or the decision on investment or change in the securities price of the company, the Office shall have the power to do any or several of the following acts:

- (1) instruct the company to submit additional reports or evidentiary documents;
- (2) instruct the director, manager, or person with power of management over the company to provide additional explanation; or
- (3) instruct the company to arrange an audit by an auditor and report the result of the audit to the Office and disclose the information to the public.

**Section 59.** The directors, managers, persons who hold management positions as prescribed by the notification of the Office, and the auditor of the company which issues securities under Section 32, Section 33 or Section 34 shall prepare and disclose reports to the Office on their securities holding and their spouses and minor children's securities holding in such company, including change in such securities holding under the rules and procedures as prescribed by the notification of the Capital Market Supervisory Board.

["Capital Market Supervisory Board" amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 60.** For the purpose of disclosing information to the public about the condition and business standing of a company which issues securities including the holding of securities in such company, the Office shall have the power to disclose the reports or the information received under Section 56, Section 57, Section 58 and Section 59 under the rules and procedures as prescribed by the notification of the Capital Market Supervisory Board.

["Capital Market Supervisory Board" amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 61.** The auditor as referred to in Section 56 shall be an auditor approved by the Office.

Upon obtaining of the approval under the first paragraph, the auditor shall have the right to audit the accounts of a securities company as referred to in Section 106, a company issuing securities listed in the Securities Exchange as referred to in Section 199, and

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a company whose securities are traded in an securities trading centre as referred to in Section 217.

**Section 62.** In making a review or audit, if the auditor finds that a company which issues securities in accordance with Section 32, Section 33 and Section 34 has inaccurately prepared a quarterly financial statement or financial statement for any accounting period, the auditor shall state his findings or disclose the facts essential to the financial statement and notify such circumstances in his review report or audit report on which he is to sign in order to give his opinion as well as inform the matter to the Office.

The Office shall have the power to withdraw its approval of any auditor who does not comply with the provisions of the first paragraph in giving an opinion on a financial statement for any accounting period.

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**CHAPTER 3**  
**PUBLIC OFFERING OF SECURITIES**

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**Section 63.** The provisions of this Chapter shall not apply to the offer for sale of the following securities:

- (1) treasury bills;
- (2) government bonds;
- (3) Bank of Thailand bonds;
- (4) bonds whose principal and interest are guaranteed by the Ministry of Finance; or
- (5) any other securities as prescribed by the notification of the SEC.

**Section 64.** The provisions of this Chapter shall not apply to the offer for sale of securities in the following cases:

- (1) the offer for sale of newly issued investment units of a securities company licensed to manage mutual funds;
- (2) the offer for sale of securities to the public or any person having a total value less than the amount prescribed in a notification of the SEC; or
- (3) the offer for sale of securities whose characteristics, type, or number of investors as prescribed by the notification of the SEC.

In an offer for sale of securities in accordance with (2) and (3), the promoters of a public limited company, a company or owner of securities shall report the result of the sale to the Office within fifteen days from the closing date of offer for sale.

**Section 65.** The offer for sale of securities to the public or any person may be made only when the registration statement and the draft prospectus, which have been filed with the Office by the promoters of a public limited company, a company or owner of securities, have become effective.

**Section 66.** In case where the offer for sale of securities to the public or any person under Section 65 whereby promoters of a public limited company or a company are required to obtain the permission from the Office, the promoters of a public limited company or a company may file the registration statement and the draft prospectus together with the application for permission under Section 32, Section 33 and Section 34, or may make such filing after the permission has been granted.

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In case where an approval has been granted under Section 33 or Section 34 to a company to offer for sale newly issued securities to the public or any person several times within the amount and time specified by the Office, and those securities are ones which have a repayment period not exceeding two hundred and seventy days, the company need not to file a registration statement and draft prospectus each time the offer for sale is made but shall submit to the Office any changes in the information contained in the registration statement and draft prospectus which have previously been filed with the Office not less than five business days prior to the date of delivery or the date of distribution of the prospectus.

**Section 67.** Subject to Section 68, the registration statement and the draft prospectus shall be effective upon the lapse of forty-five days after receipt of such registration statement and prospectus by the Office, except where the Capital Market Supervisory Board announces and prescribes the effectiveness before completion of the said time.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 68.** In case where the promoters of a public limited company or a company submit the registration statement and the draft prospectus together with an application for permission of an offer to sale of newly issued securities under Section 32, Section 33 or Section 34, if the Office has not permitted to make an offer for sale of newly issued securities after the lapse of the time specified in Section 67, such registration statement and draft prospectus shall become effective only when the permission has been granted to the promoters of such public limited company or such company to make an offer for sale of newly issued securities.

**Section 69.** A registration statement shall be in the form as prescribed by the notification of the Capital Market Supervisory Board and shall contain details of the following particulars:

- (1) objective of the offer for sale of securities to the public or any person;
- (2) name of the issuing company;
- (3) capital of the company;
- (4) amount and type of the securities offered for sale;
- (5) expected selling price per unit of securities;

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- (6) nature of the business;
- (7) financial condition, business standing, and essential information of the business;
- (8) management and major shareholders of the issuing company;
- (9) auditor, regularly contacted financial institutions, and legal advisor of the issuing company;
- (10) procedure for the subscription, underwriting and allocation of securities; and
- (11) any other information as prescribed by the notification of the Capital Market Supervisory Board.

In filing a registration statement, the Office may instruct the promoters of a public limited company, a company or owner of securities to attach any documents other than those specified in the registration statement.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 70.** The registration statement for sale of securities in the category of bills or debentures shall, in addition to details of the particulars under Section 69, contain details of the following particulars:

- (1) rights and restrictions on the transfer of bills or debentures;
- (2) return;
- (3) property or other collateral used as security for issuance of securities (if any);
- (4) representative of debenture holders (if any);
- (5) encumbrances on the property of the company which issues securities in case of unsecured securities;
- (6) outstanding debt from previous issues of bills or debentures;
- (7) procedure, time, and place of repayment;
- (8) procedure for the conversion of rights (if any); and
- (9) other information as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 71.** The registration statement for the sale of warrants to purchase shares, warrants to purchase debentures, or warrants to purchase investment units shall, in

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addition to details of the particulars under Section 69, contain details of the following particulars:

- (1) rights and conditions under the warrants;
- (2) resolution of shareholders meeting authorizing the issue of shares or debentures, or approval of the Office to issue investment units for exercising rights under the warrants, as the case may be;
- (3) amount of shares, debentures, or investment units to be issued under the warrants;
- (4) procedure for the conversion of rights; and
- (5) other information as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 72.** The draft prospectus shall be on form as prescribed by the notification of the Office. For a particular in the prospectus similar to that in the registration statement, essential contents of the information shall not be different.

**Section 73.** In case where the Office considers that the statements or particulars in the registration statement and the draft prospectus are invalid or incomplete, the Office shall have the power to order the person who filed the registration statement and the draft prospectus to file the particulars or amend completely. However, the Office shall not give such an order after the registration statement and the draft prospectus have become effective under Section 67 or Section 68.

**Section 74.** Prior to the effective date of the registration statement and the draft prospectus, if the promoters of a public limited company, the company or owner of the securities wishes to amend the particulars or information in the registration statement and the draft prospectus, they/he/she may submit an application for amendment to the particulars or the information already filed with the Office, unless it is an amendment to the essential contents, the Office may stipulate that such amendment results in submission of a new registration statement and draft prospectus, and the date on which the Office receives the application for such amendment shall be deemed the date of commencement of the period of time under Section 67.

In case where the Office considers that the amendment as referred to in the first paragraph may affect the interests of investors, the Office shall have the power to order

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the promoters of a public limited company, the company or owner of securities to file additional evidentiary documents or information.

**Section 75.** In counting the period of time under Section 67, the time from the date on which the Office issues an order under Section 73 or Section 74 paragraph two until the date on which the Office receives complete evidentiary documents or information shall not be counted.

**Section 76.** After the date on which the registration statement and the draft prospectus are effective, the Office shall have the power to act as follows:

(1) In case where the Office finds that the statements or the particulars in the registration statement and the prospectus are false or lack essential information which may cause damage to purchasers of securities, the Office shall have the power to order the suspension of the effectiveness of the registration statement and the draft prospectus. In case where the offer for sale of securities is permitted under Section 32, Section 33 or Section 34, the Office shall have the power to order the withdrawal of such permission immediately;

(2) In case where the Office finds that the statements or the particulars in the registration statement and the prospectus are essentially incorrect, or there is an event which causes an essential change in the information contained in the registration statement and draft prospectus which may affect decisions on investment of the purchasers of securities, the Office shall have the power to order the temporary suspension of the effectiveness of the registration statement and the draft prospectus until the information has been corrected and any other action as prescribed by the Office has been taken to make people know such correction; and

(3) When the Office finds that the statements or the particulars in the registration statement and the prospectus are incorrect in otherwise manner, the Office shall have the power to order the promoters of a public limited company, the company or owner of securities to file the said documents to correct such information.

The order of the Office under the first paragraph does not affect any act of the promoters of a public limited company, the company or owner of securities undertaken prior to such order and does not affect the right of a person to claim for damages provided for in Section 82.

**Section 77.** When the promoters of a public limited company, the company or owner of securities has filed the registration statement or the draft prospectus,

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distribution of the information relating to the offer for sale of securities may be made prior to the effective date of such registration statement and the draft prospectus. However, the information so distributed must contain such essential contents as prescribed by the notification of the Office, with a highly visible statement that the distribution is not a prospectus, however, according to the rules and procedures as prescribed by the notification of the Office.

**Section 78.** Any person who wishes to examine or obtain a copy of a registration statement and draft prospectus filed with the Office may do so when the regulations prescribed by the notification of the Office have been satisfied.

**Section 79.** When the registration statement and the draft prospectus have become effective, the offer for sale of securities to the public may be made only when the prospectus containing the date of filing of the registration statement and draft prospectus has been delivered or distributed.

**Section 80.** Advertisement and invitation made to the public or any other person to purchase securities by the promoters of a public limited company, the company or owner of securities which do not follow the procedure as referred to in Section 79 can be made only when the registration statement and the draft prospectus have become effective under Section 67 or Section 68 and shall not contain exaggerated, false or misleading statements. When the advertisement is made through a printed matter, it shall contain details of the following particulars:

- (1) amount, type, offer price per unit and total value of securities offered;
- (2) names of the promoters of the public limited company, the company or the owner of the securities;
- (3) type of business to be or being operated;
- (4) place and time at which the draft prospectus may be obtained;
- (5) names of underwriters (if any); and
- (6) other particulars as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 81.** After the completion of the sale of securities, the promoters of a public limited company, the company or owner of securities shall report the result of the

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sale to the Office. When an offering is made through an underwriter, the promoters of a public limited company, the company or owner of securities shall report the amount of securities and the amount of money paid for securities which have been purchased by the underwriter as well.

The report as referred to in the first paragraph shall be made in accordance with the rules and procedures prescribed by the notification of the Office.

**Section 82.** When the registration statement and the prospectus contain false statements or particulars or fail to disclose essential facts that should have been stated therein, any person, who purchases securities from the promoters of a public limited company, the company or owner of securities and still owns such securities, suffers damage from such purchase, shall be entitled to a claim for damages from the company or the owner of the securities.

The securities purchaser who is entitled to a claim for damages under the first paragraph must have purchased the securities before the facts under the first paragraph become apparent. However, the facts must become apparent within one year from the effective date of the registration statement and draft prospectus.

**Section 83.** The following persons shall be liable under Section 82 jointly with the company or the owner of securities unless it is proven that such persons are not aware of the facts or by their positions they could not have been aware of the truthfulness of the information or lack of statement required to be stated:

- (1) directors who have the power to bind the company and signed their names in the registration statement and prospectus;
- (2) promoters of a public limited company who signed their names in the registration statement and prospectus; and
- (3) underwriters, auditors, financial advisors, or appraisers of assets who intentionally or with gross negligence signed their names to certify the information in the registration statement and prospectus.

**Section 84.** The company or the owner of securities and the persons referred to in Section 83 are not liable to pay damages in accordance with Section 82 in the following cases:

- (1) the subscribers knew or should have known that the statements or particulars were false or that there was a failure to disclose essential facts required to be stated therein; or

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(2) damage did not arise from the result of the receipt of false statements or particulars or the failure to disclose essential facts required to be stated therein.

**Section 85.** The liability for damages under Section 82 shall be equivalent to the difference between the amount which the person who exercises the claim for damages has paid for the acquisition of such securities and the price which should have been had the disclosure of information been correctly made as specified by the Office. The said price shall not be less than the par value of such securities, plus interest on such difference at the maximum average rate payable for fixed deposit of one year or more from at least four commercial banks specified by the Office.

**Section 86.** The right to the claim for damages under Section 82 shall have a prescription of one year from the date on which the fact that the registration statement and prospectus contained false statements or particulars became known or should have been known, but not exceeding two years from the effective date of the registration statement and the draft prospectus.

**Section 87.** The effectiveness of the registration statement and draft prospectus does not demonstrate that the SEC and the Office have certified the correctness of information contained in the registration statement and the draft prospectus or that the SEC and the Office have guaranteed the price of the securities being offered for sale.

**Section 88.** The company or the owner of securities shall deliver the securities to the purchasers of the securities in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[Capital Market Supervisory Board is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 89.** The auditor who gives an opinion on a financial statement which is disclosed in the registration statement of newly issued securities and prospectus in this Chapter shall be an auditor who has been given an approval by the Office.

## CHAPTER 3/1

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## GOVERNANCE OF PUBLICLY TRADED COMPANY<sup>41</sup>

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**Section 89/1.**<sup>42</sup> In this Chapter;

“company” means

(1) a public limited company permitted to offer for sale of shares to the public except a public limited company with such characteristics as prescribed by the notification of the Capital Market Supervisory Board;

(2) a public limited company whose shares are listed on the Securities Exchange or whose shares are sold on the securities trading centre.

“subsidiary” means

(1) a limited company or a public limited company over which the company has control;

(2) a limited company or a public limited company over which the subsidiary under (1) has control; or

(3) a limited company or a public limited company under the chain of control beginning with that under control of the subsidiary under (2).

“board of directors” means a board of directors of a company.

“director” means a director of a company.

“executive” means a manager or a person responsible for the management of the company, whether de facto or as authorized by the board of directors as prescribed by the notification of the Capital Market Supervisory Board.

“related person” means a person with any of the following relationships:

(1) a person having control over the company and in case of a juristic person, including the board of directors of the said juristic person;

(2) the spouse, a minor child or an adopted minor child of the director, the executive or the person under (1);

(3) a juristic person over which the person under (1) or (2) has control; or

(4) any other persons as prescribed by the notification of the Capital Market Supervisory Board.

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<sup>41</sup> Chapter 3/1 Governance of Publicly Traded Company, Section 89/1 through 89/32 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>42</sup> Section 89/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

When any person acts with understanding or agreement that if the company enters into any transaction which provides financial benefits for such person, the director, the executive or the person under (1) or (2) will also gain financial benefits, the said person shall be deemed the related person for such particular transaction.

“control” means

- (1) holding of shares with voting right of a juristic person in an amount exceeding fifty per cent of the total number of voting rights of such juristic person;
- (2) having control of majority voting rights in the shareholders’ meeting of any juristic person, whether directly or indirectly or any other reasons;
- (3) having control over appointment or removal of at least half of all directors directly or indirectly.

**Section 89/2.**<sup>43</sup> No securities company or company shall perform any unfair treatment against an officer, an employee or any other person hired to work for the securities company or securities-issuing company, whether by changing his position, job description or work place, suspending, threat, harassment, lay-off or any other actions of unfair treatment against such person because the said person;

(1) provides information, cooperation or assistance by any means to the SEC, the Capital Market Supervisory Board or the Office in case where the officer, the employee or such other person believes or has reasons to believe in good faith that there has been contravention or failure to comply with this Act; or

(2) gives statements, files evidentiary documents or gives assistance by any means to the SEC, the Capital Market Supervisory Board or the Office for the purpose of consideration or inspection in case where it is suspicious that there has been violation or failure to comply with this Act, regardless of whether such person has done so in accordance with the order of the SEC, the Capital Market Supervisory Board or the Office.

## DIVISION 1 Director and Executive<sup>44</sup>

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<sup>43</sup> Section 89/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>44</sup> Division 1 Director and Executive, Section 89/3 through 89/6 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 89/3.**<sup>45</sup> A director shall have qualifications and shall not have prohibited characteristics as specified in the law on public limited companies, as well as shall not have characteristics indicating a lack of appropriateness to be entrusted with managing business whose shares are held by public shareholders as prescribed by the notification of the SEC.

**Section 89/4.**<sup>46</sup> In addition to vacating office for reasons specified in the law on public limited companies, a director shall vacate office upon having characteristics indicating a lack of appropriateness to be entrusted with managing a business whose shares are held by public shareholders under Section 89/3 and shall not continue to hold managing position in the company.

**Section 89/5.**<sup>47</sup> All businesses of the company undertaken by the board of directors, a director or any person assigned by the board of directors, on behalf of the company, shall be valid and binding on the company, although a director is later found disqualified or has prohibited or improper characteristics under Section 89/3.

**Section 89/6.**<sup>48</sup> An executive shall have qualifications and shall not have prohibited characteristics indicating a lack of appropriateness to be entrusted with managing a business whose shares are held by public shareholders as prescribed by the notification of the SEC.

Any executive who lacks qualifications or has prohibited characteristics under the first paragraph shall vacate office and shall not continue to hold executive position in the company.

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<sup>45</sup> Section 89/3 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>46</sup> Section 89/4 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>47</sup> Section 89/5 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>48</sup> Section 89/6 added by the Securities and Exchange Act (No. 4) B.E. 2551

DIVISION 2  
Duty and Responsibility of Director and Executive<sup>49</sup>

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**Section 89/7.**<sup>50</sup> In conducting the business of the company, a director and an executive shall perform his duty with responsibility, due care and honesty, and shall comply with all laws, the objectives, the articles of association of the company, the resolutions of the board of directors as well as the resolutions of the meeting of shareholders.

**Section 89/8.**<sup>51</sup> In performing duty with responsibility and due care, a director and an executive shall act in the similar manner as a reasonable person undertaking the like business under the similar circumstance.

Any matter proven by the director or executive that, at the time of considering such matter, his decision has met the following requirements shall be deemed that the said director or executive has performed his duty with responsibility and due care under the first paragraph:

- (1) decision has been made with honest belief and reasonable ground that it is for the best interest of the company;
- (2) decision has been made in reliance of information honestly believed that it is sufficient; and
- (3) decision has been made without his interest, whether directly or indirectly, in such matter.

**Section 89/9.**<sup>52</sup> In considering whether each director or executive has performed his duty with responsibility and due care, the following factors shall be taken into account:

- (1) position in the company held by such person at that time;
- (2) scope of responsibility in the position of such person in accordance with the laws or as assigned by the board of directors; and

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<sup>49</sup> Division 2 Duty and Responsibility of Director and Executive, Section 89/7 through 89/25 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>50</sup> Section 89/7 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>51</sup> Section 89/8 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>52</sup> Section 89/9 added by the Securities and Exchange Act (No. 4) B.E. 2551



(3) qualifications, knowledge, capability, and experience, including purposes of appointment.

**Section 89/10.**<sup>53</sup> In performing the duty with honesty, a director and an executive shall:

- (1) act in good faith for the best interest of the company;
- (2) act with rightful and proper purpose; and
- (3) not act in significant conflicts with or in contrary to the interest of the company.

**Section 89/11.**<sup>54</sup> Any of the following acts, which results in a director, an executive or a related person receiving any financial benefits other than those that should be ordinarily obtained, or which causes damage to the company, shall be presumed an act in significant conflict with or in contrary to the interest of the company:

- (1) entering into a transaction between the company or the subsidiary and the director or related person inconsistent to Section 89/12 or Section 89/13;
- (2) use of ascertained information of the company other than that already disclosed to the public, or
- (3) use of asset or business opportunity of the company in contravention to the rules or general practices as prescribed by the notification of the Capital Market Supervisory Board.

**Section 89/12.**<sup>55</sup> A director, an executive or a related person may enter into any transaction with the company or the subsidiary only after obtaining approval from the meeting of shareholders, unless such transaction meets any of the following manners:

- (1) a transaction which is a commercial agreement in a manner a reasonable person enters into with a general party in a similar circumstance, with a commercial negotiation free of his/her influence as the director, executive or related person, as the case may be, and such commercial agreement has been approved by the board of directors or complies with the principle approved by the board of directors;
- (2) granting of loans in accordance with the regulations on welfare of the staff and employees;

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<sup>53</sup> Section 89/10 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>54</sup> Section 89/11 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>55</sup> Section 89/12 added by the Securities and Exchange Act (No. 4) B.E. 2551

(3) a transaction in which the other party to the company is, or both parties are;

(a) a subsidiary or subsidiaries whose shares are held by the company in the amount not less than ninety per cent of its total number of shares sold; or

(b) a subsidiary or subsidiaries in which a director, an executive or a related person holds shares or has an interest, whether directly or indirectly, not more than the amount, rate, or has characteristics as prescribed by the notification of the Capital Market Supervisory Board;

(4) a transaction in particular category or with value not more than the amount or rate as prescribed by the notification of the Capital Market Supervisory Board.

In announcing and prescribing under (3) (b) or (4), the Capital Market Supervisory Board may prescribe that the specified transaction shall be approved by the board of directors

The provision of Section 87 of the Public Limited Companies Act B.E.2535 shall not apply to the transaction between the director and the company or the subsidiary.

**Section 89/13.**<sup>56</sup> Where it has reasonable ground judging from essential effect of the transaction on the company or relationship between such transaction and ordinary business of the company, the Capital Market Supervisory Board shall be empowered to announce and prescribe the rules governing the following matters applicable to the transaction between the company or the subsidiary and a director, an executive or a related person:

(1) disclosure of information in relation to the entering into such transaction to investors, in general or on a notice calling the meeting of the board of directors or the meeting of shareholders;

(2) number of votes at the shareholders' meeting required in the resolution approving the entering into such transaction;

(3) rules for the meeting of shareholder including arrangement of ballots of shareholders, arrangement of a meeting inspector or consideration on special interest of shareholders who have no right to vote.

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<sup>56</sup>

Section 89/13 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 89/14.**<sup>57</sup> A director and an executive shall file with the company a report on his interest or a related person's interest in relation to management of the company or the subsidiary in accordance with the rules, conditions and procedures prescribed by the notification of the Capital Market Supervisory Board.

**Section 89/15.**<sup>58</sup> The board of directors shall arrange a company secretary responsible for the following matters on behalf of the company or the board of directors:

- (1) preparing and keeping the following documents:
  - (a) a register of directors;
  - (b) a notice calling the board meeting, minutes of the board meeting and an annual report of the company; and
  - (c) a notice calling a shareholder meeting and minutes of a shareholder meeting;
- (2) keeping a report on interest filed by a director or an executive; and
- (3) undertaking any other task as prescribed by the notification of the Capital Market Supervisory Board.

When the company secretary vacates his position or is unable to perform his duty, the board of directors shall appoint a new company secretary within ninety days from the date on which the original company secretary vacates his position or is unable to perform his duty. In this regard, the board of directors shall be empowered to assign any director to perform the duty of company secretary during such period.

The Chairperson shall notify the Office of name of the company secretary within fourteen days from the date on which a person in charge of such position has been appointed and shall notify the Office of the place where the documents under (1) and (2) of the first paragraph are kept.

**Section 89/16.**<sup>59</sup> The company secretary shall submit a copy of report on interest under Section 89/14 to the board Chairperson and the Audit Committee Chairperson within seven business days from the date on which the company has received such report.

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<sup>57</sup> Section 89/14 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>58</sup> Section 89/15 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>59</sup> Section 89/16 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 89/17.**<sup>60</sup> A company shall arrange a system for safekeeping of documents and evidence in relation to disclosure of information under Section 89/20, and monitor safekeeping of such documents or evidence for its accuracy and completion as well as availability for inspection for the period not less than five years from the date of preparing such documents or information.

Safekeeping of the documents and evidence under the first paragraph shall include safekeeping by means of a computer system or any other systems which can be retrieved without any change of information.

**Section 89/18.**<sup>61</sup> In addition to the action brought against a director under Section 85 and Section 86 of the Public Limited Companies Act B.E. 2535, in case where the director acts or omits to act constituting non-compliance to Section 89/7 which causes the director, the executive or the related person to obtain undue benefits, the company may bring an action against the director for restitution of such benefits to the company.

When one or several shareholders representing shares and voting rights of not less than five per cent of the total number of voting rights of the company have issued a written notice directing the company to bring the action under the first paragraph and the company fails to proceed as directed within one month from the date of the notice, such shareholder or shareholders may bring the action for restitution of benefits under the first paragraph in place of the company.

When the shareholder or shareholders bring the action under this Section in place of the company, if the court considers that the action is brought by the shareholder or shareholders in good faith, the court shall be empowered to order the company to compensate the said shareholder or shareholders for actual expenses as the court thinks fit. In this regard, for the purpose of determining such expenses, the court shall be empowered to order the company to be a party in the case.

**Section 89/19.**<sup>62</sup> The provision of Section 89/18 shall apply to the case against an executive whose action or omission constituting non-compliance with his duty

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<sup>60</sup> Section 89/17 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>61</sup> Section 89/18 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>62</sup> Section 89/19 added by the Securities and Exchange Act (No. 4) B.E. 2551

under Section 89/7 to return undue benefits obtained by him or the director or related person, *mutatis mutandis*.

**Section 89/20.**<sup>63</sup> The directors and the executives shall be jointly liable to a person who traded securities of the company for any damage arising from disclosure of information to shareholders or public which contains false statements or conceals essential facts which should have been stated in the following cases, unless the directors or the executives can prove that, by his position, he could not have been aware of the truthfulness of information or the lack of information which should have been stated:

- (1) providing information in support of seeking a resolution of the shareholder meeting;
- (2) financial statements and reports concerning the financial condition and the business standing of the company or any other report required to be disclosed under Section 56, Section 57, Section 58 or Section 199;
- (3) an opinion of the business when a person makes the general tender offer to purchase shares from shareholders;
- (4) providing information or any other report in relation to the business prepared by the company for the purpose of disclosure to shareholders or public as prescribed by the notification of the Capital Market Supervisory Board.

In bringing an action to claim damages under the first paragraph, no action shall be brought to the court upon the lapse of two years from the date on which the injured person has been aware of the disclosure of a false statement or the concealment of facts under the first paragraph or five years from the date on which such act has been committed.

**Section 89/21.**<sup>64</sup> A director or executive who acts or omits to act in bad faith or with gross negligence which causes damage to the company or causes the company to lose benefit which should have been obtained, shall not be allowed to make use of an approval or ratification by the shareholder meeting or the board of directors in order to release him from liabilities.

The act or omission to act under the first paragraph shall include the following cases:

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<sup>63</sup> Section 89/20 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>64</sup> Section 89/21 added by the Securities and Exchange Act (No. 4) B.E. 2551

- (1) a request for a resolution of the board of directors or the shareholder meeting by presenting a false statement or concealing essential facts which should have been stated therein;
- (2) a case relevant to misappropriation of assets or benefits of the company; and
- (3) a case relevant to seeking benefit from assets of the company.

**Section 89/22.**<sup>65</sup> The provisions in relation to duties and responsibilities of directors and executives under Section 89/7 to Section 89/21 including the related penalty provisions shall apply *mutatis mutandis* to the following persons:

- (1) interim executive, plan preparer, plan administrator and interim plan administrator under the law on bankruptcy. When such person is a juristic person, it shall include relevant directors and executives of such juristic person; and
- (2) liquidator.

**Section 89/23.**<sup>66</sup> A company secretary shall perform his duty under section 89/15 with care and responsibility and in good faith as well as in compliance with all laws, the objectives, the articles of association of the company, and the resolutions of the board of directors and the shareholder meeting, and for this purpose the provisions of the second paragraph of section 89/8, section 89/10, section 89/11(2) and (3), and section 89/18 shall apply *mutatis mutandis*.

**Section 89/24.**<sup>67</sup> The provisions of Section 89/7, Section 89/8, Section 89/9 and Section 89/10 including related penalty provisions shall apply *mutatis mutandis* to the performance of duty of the directors and executives of the subsidiary.

The provisions of the first paragraph shall apply *mutatis mutandis* to the persons referred to in Section 89/22(1) and (2) of the subsidiary.

**Section 89/25.**<sup>68</sup> In auditing a securities company or a company in accordance with the accounting standards, either as the appointed auditor of such juristic person or as a person allowed by such juristic person to conduct the audit work, if the

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<sup>65</sup> Section 89/22 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>66</sup> Section 89/23 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>67</sup> Section 89/24 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>68</sup> Section 89/25 added by the Securities and Exchange Act (No. 4) B.E. 2551

auditor discovers any suspicious circumstance that the director, manager or any person responsible for the operation of such juristic person commits an offence under Section 281/2 paragraph two, Section 305, Section 306, Section 308, Section 309, Section 310, Section 311, Section 312 or Section 313, the auditor shall inform the fact relating to such circumstance to the audit committee of the securities company or company in order to continue the audit work without delay and the audit committee shall report the result of preliminary auditing to the Office and the auditor within thirty days of the date notice is received from the auditor.

When the audit committee fails to comply with the first paragraph, the auditor shall report the matter to the Office.

Suspicious circumstances that shall be informed under the first paragraph and procedures for acquiring the fact relating to such circumstances shall comply with the notification of the Capital Market Supervisory Board.

### DIVISION 3 Shareholder Meeting<sup>69</sup>

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**Section 89/26.**<sup>70</sup> At a shareholder meeting, a person who has the right to vote shall be a shareholder whose name is recorded in the shareholders' register as of the date determined by the board of directors and the amount of shares which each shareholder has the right to vote shall be in accordance with the shareholders' register as of the same date. In this regard, the right of such person shall not be affected even though the information in the shareholders' register as of the date of the shareholders' meeting has been changed.

The date determined by the board of directors under the first paragraph shall not exceed two months prior to the date of the shareholder meeting but not prior to the date on which the board of directors has approved to call for the meeting. When the board of directors determines the date on which the recorded shareholders have the right to attend the meeting, such date cannot be altered.

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<sup>69</sup> Division 3 Shareholder Meeting, Sections 89/26 through 89/32 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>70</sup> Section 89/26 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 89/27.**<sup>71</sup> The Capital Market Supervisory Board shall have the power to announce and prescribe types or details of the information that the board of directors shall inform the shareholders in the written notice calling the meeting as well as the period of sending of the notice of calling of such meeting.

**Section 89/28.**<sup>72</sup> A shareholder or shareholders who hold shares and have the right to vote amounting to not less than five per cent of the total number of the voting rights of the company may submit a written proposal in order to request the board of directors to include such proposal as an agenda of the shareholder meeting. The proposal shall indicate whether it is the matter proposed for information, for approval or for consideration, as the case may be, including details of the proposed matter for the annual ordinary general meeting or extraordinary general meeting, provided that it shall comply with rules as prescribed by the notification of the Capital Market Supervisory Board.

The board of directors shall include the matter proposed by the shareholders under the first paragraph as the agenda of the upcoming shareholder meeting. In the following cases, however, the board of directors may refuse to include such proposal as the agenda of the meeting:

- (1) the proposal does not comply with rules as specified in the first paragraph;
- (2) the proposal is relevant to the ordinary business standing and the fact given by the shareholders does not indicate any reasonable ground to suspect the irregularity of such matter;
- (3) the proposal is beyond the company's power to produce the purposed result;
- (4) the proposal was submitted to the shareholder meeting for its consideration within the previous twelve months and received the supporting votes of less than ten per cent of the total number of the voting rights of the company, unless the fact pertaining in the resubmission has significantly changed from that of the previous shareholder meeting; or
- (5) any other cases as prescribed by the notification of the Capital Market Supervisory Board.

When the board of directors refuses to include the matter proposed by the shareholders under the first paragraph as the agenda in any shareholder meeting, it shall be

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<sup>71</sup> Section 89/27 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>72</sup> Section 89/28 added by the Securities and Exchange Act (No. 4) B.E. 2551



notified as the matter for information in that shareholder meeting and specified the reasons of such refusal.

When the shareholders in the meeting under the third paragraph pass a resolution, with a majority vote of the total number of shareholders present at the meeting and have the right to vote, to include the matter proposed by the shareholders under the first paragraph as the agenda of the meeting, the board of directors shall include such matter as the agenda of the next shareholder meeting.

**Section 89/29.**<sup>73</sup> The following transactions shall be approved by the shareholder meeting, if significant to the company in accordance with rules as prescribed by the notification of the Capital Market Supervisory Board:

- (1) acquisition or disposal of asset regardless of whether it is the asset of the company or the subsidiary;
- (2) transfer or abdication of the right and interest, and the claim against any person who causes damage to the company regardless of whether such right and interest is related to the asset of the company or the subsidiary;
- (3) entering, amending or terminating of contract with respect to the granting of a lease or hire-purchase of business or asset in whole or in part regardless of whether such business or asset is operated by the company or its subsidiary;
- (4) entrusting other persons to manage the business in whole or in part regardless of whether such business is operated by the company or the subsidiary;
- (5) merger with other persons which is likely to affect the management structure of the company;
- (6) lending of money, granting credit, guaranteeing, concluding juristic act binding the company to bear more financial burden when a third person lacks liquidity or is unable to perform the obligation or giving financial assistance to other persons in any other mean which is not the ordinary business of the company regardless of whether the said act is done by the company or the subsidiary; and
- (7) any other act as prescribed by the notification of the Capital Market Supervisory Board.

The Capital Market Supervisory Board shall have the power to announce and prescribe additional rules governing the following matters to apply to transactions of the company under the first paragraph:

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<sup>73</sup>

Section 89/29 added by the Securities and Exchange Act (No. 4) B.E. 2551

(1) disclosure of information to investors in general in relation to the transactions of the company under the first paragraph, or information in written notice calling for the meeting of the board of directors or the shareholder meeting; and

(2) amount of vote in the shareholder meeting exercised for an approval of the said transactions.

**Section 89/30.**<sup>74</sup> In a shareholder meeting, if there is contravention or failure to comply with the provisions of this Chapter in respect of sending a written notice calling for the meeting or voting, a shareholder or shareholders holding not less than five per cent of the total number of the voting rights of the company may file a motion with the court to order revocation of a resolution passed at such meeting. In this regard, the provisions concerning filing a motion to the court to order revocation of a resolution of a shareholder meeting in accordance with the law on public limited companies shall apply *mutatis mutandis*.

**Section 89/31.**<sup>75</sup> Solicitation, leading or doing any act in any manner to shareholders of the company in general with a view to enticing the shareholders to give proxy to oneself or any other person to attend and vote at the shareholder meeting on their behalf, shall be complied with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

**Section 89/32.**<sup>76</sup> A company may arrange a shareholder meeting by using more than one meeting room, provided that the company shall assure that the opinions given by the shareholders in one meeting room are communicable to other shareholders in each of the meeting rooms in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

## CHAPTER 4 SECURITIES BUSINESS

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<sup>74</sup> Section 89/30 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>75</sup> Section 89/31 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>76</sup> Section 89/32 added by the Securities and Exchange Act (No. 4) B.E. 2551

DIVISION 1  
Formation and Issuance of License

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**Section 90.** Securities business can be undertaken only by formation of either a limited company or a public limited company, or by a financial institution established in accordance with other laws, and after having obtained a license from the Minister upon the recommendation of the SEC.

Paragraph Two<sup>77</sup> (Repealed)

A merger of securities companies shall be deemed to be the formation of a limited company or of a public limited company, as the case may be.

The application for a license, application for an approval, the issuance of a license, and the granting of an approval under this Section shall be in accordance with the rules, conditions and procedures, and subject to the payment of fees, as specified in the ministerial regulations.

**Section 91.** Where it is necessary to maintain the economic and financial stability of the country, or to protect the public interest, the Minister upon the recommendation of the SEC has the power to impose conditions on the license holder in undertaking of the securities business.

In case the circumstance which gives rise to necessity under the first paragraph changes, the Minister upon the recommendation of the SEC may modify or change the imposed conditions.

**Section 92.** A securities company may establish a branch office, however, permission must be obtained from the Office.

The application for and the granting of such permission shall be in accordance with the rules, conditions and procedures as specified by the Capital Market Supervisory Board.

The establishment of a branch office of a financial institution established under other laws shall comply with such governing laws.

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<sup>77</sup> Section 90 paragraph two repealed by the Securities and Exchange Act (No. 4) B.E. 2551

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 93.** Any person wishing to act on behalf of a company established to undertake securities business under foreign law by setting up a representative office for making contact with the general public in the Kingdom shall obtain the permission from the Office.

The representative under the first paragraph shall undertake only those businesses specified in the permission.

The provisions of Section 95 shall not apply to the person who obtains the permission under this Section. However, such person shall comply with the regulations specified by the Office.

## DIVISION 2 Supervision and Control

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**Section 94.** A securities company shall include in its name the words “securities company” at the beginning and the word “limited” at the end.

**Section 95.** No person other than a securities company shall use the name or a denotation “securities company” in business, or any other word of the same meaning.

**Section 96.**<sup>78</sup> The SEC may require a securities company to have paid-up registered capital in an amount specified for operation of any category of securities business, except for a securities company operating securities business in the category of securities trading or securities underwriting, or operating securities business in any of the following manners, the SEC shall specify the paid-up registered capital of at least one hundred million baht:

- (1) Keeping the client’s assets in its possession;
- (2) Investing in or holding securities for investment by the securities company itself; or
- (3) Bearing a responsibility for the clearing and settlement for securities.

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<sup>78</sup> Section 96 amended by the Securities and Exchange Act (No. 2) B.E. 2542

**Section 97.** A securities company shall maintain capital adequacy in accordance with the rules, conditions and procedures as specified by the SEC.

**Section 98.** No securities company shall:

(1) reduce its capital without a permission from the Capital Market Supervisory Board;

(2) engage in any act which may mislead its customers or the public in any matter concerning the price, value and nature of the securities involved;

(3) engage in any act which may cause damage to or take advantage of its customers or other interested person as specified by the Capital Market Supervisory Board;

(4) purchase or sell securities in advance whether in its own name or for customers unless the Capital Market Supervisory Board issues a notification allowing such transaction;

(5) sell securities without having possession, or without receiving an order to sell from another person, unless the Capital Market Supervisory Board issues a notification allowing such transaction;

(6) accept purchasing or selling orders from customers outside its head office or branch offices unless otherwise specified by the Office;

(7) purchase or hold shares, except:

(a) those acquired in the course of securities trading, securities underwriting, or other securities businesses as prescribed by the notification of the Capital Market Supervisory Board; or

(b) those acquired through an exemption from the Office and in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board;

(8) engage in any other business which is not a licensed securities business, unless permission is obtained from the Capital Market Supervisory Board.

Other business under the first paragraph does not include the lending of money for purchasing, selling or exchanging securities in the course of securities brokerage or securities trading business or the purchase and sale or exchange of securities in the Securities Exchange and in an securities trading centre by a securities company licensed to undertake securities trading business;

(9) relocate its head office or branch office without permission from the Office; or

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(10) advertise its business, unless such advertisement is carried out in accordance with the rules, conditions and procedures as prescribed by the notification of the Office.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 99.** When a question arises as to whether the securities company holds securities for its customers’ or its own account or for the account of any customer, it shall be deemed that the securities certificates in the securities company’s possession at any time are held for the persons in the following order:

(1) the securities company’s possession for its customers shall take precedence over the possession for its own account;

(2) the customer who placed a purchase order prior to the other customer shall take precedence over that other customer whether or not the said securities are held as collateral for the repayment of loan.

**Section 100.** The appointment of any person to be an agent or broker of a securities company shall require prior permission from the Office.

Application for the permission and the granting of the permission shall be in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 101.** Amendment of the securities company’s memorandum or articles of association must be notified in writing to the Office within fifteen days from the date of such amendment.

**Section 102.**<sup>79</sup> The lending of money for the purchase, sale or exchange of securities by a securities company shall be in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

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<sup>79</sup> Section 102 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 103.** No securities company shall appoint or allow any person with any of the following prohibited characteristics to be or to perform the duty of a director, a manager or a person with power of management, or an advisor:

- (1) being or having been bankrupt;
- (2) having been sentenced by a final judgment to imprisonment for an offence related to property committed with dishonest intent;
- (3) having been a director, a manager or a person with power of management of a financial institution whose license was revoked, unless an exemption has been granted by the Capital Market Supervisory Board;
- (4)<sup>80</sup> being a director, a manager or a person with power of management of any other securities companies, unless it complies with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board;
- (5) having been removed from the board Chairperson, director or manager under Section 144 or Section 145, or having been removed under the provisions of other laws;
- (6) being a political official;
- (7) being a government official with the duty to supervise securities companies, an officer of the Bank of Thailand or of the Office, unless a case where:
  - (a) he/she is appointed with consent of the Capital Market Supervisory Board to assist operation of a securities company; or
  - (b) he/she is appointed under Section 145;
  - (c) the securities company is a state enterprise under the law governing budget procedures.
- (8)<sup>81</sup> **(Repealed)**
- (9) being a person who possess no educational qualifications, work experience or other qualifications as prescribed by the notification of the Capital Market Supervisory Board;
- (10) having other prohibited characteristics as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

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<sup>80</sup> Section 103 (4) amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>81</sup> Section 103 (8) repealed by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 104.** A securities company shall appoint directors or managers or enter into an agreement with another person, giving the power, either in whole or in part, to manage business of the securities company only when approval is obtained from the Office.

When it later appears that the persons under the first paragraph have the prohibited characteristics as specified in Section 103, the Office shall have the power to withdraw its approval so given, and the securities company shall propose other persons for approval from the Office within fifteen days from the date the approval is withdrawn.

The provisions in Section 103 shall apply *mutatis mutandis* to a person with whom the securities company enters into an agreement, giving him the power, either in whole or in part, to manage business of such securities company, and to a person who performs work for such person.

**Section 105.** A securities company shall prepare accurate accounts showing business standing and financial condition in compliance with accounting standards established by a professional institution approved by relevant government agencies, and additional requirements prescribed by the notification of the SEC.

**Section 106.** A securities company shall prepare the balance sheet and profit and loss account for each accounting period of six months on a form prescribed by the notification of the Office. The balance sheet shall be audited and opined by an auditor approved by the Office for such financial year. Such auditor shall not be a director, officer or employee of the securities company.

The balance sheet and profit and loss account prepared under the first paragraph for each accounting period of six months shall be posted at an open place of office of such securities company, and shall be published in at least one local daily newspaper, and one copy shall be submitted to the Office.

Preparation of the balance sheet and the profit and loss account for the first six months of the financial year under the first paragraph and the publication under the second paragraph shall be completed within three months from the end of the accounting period. For each financial year, such preparation shall be completed within twenty-one days from the date of approval by the general meeting of the shareholders but not later than four months from the end of such financial year, unless otherwise specified by the Office.

**Section 107.** The auditor as referred to in Section 106 shall adhere to the ethical code of auditors, perform the audit work and declare his opinion according to the

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provisions of the law governing auditors and additional provisions as prescribed by the notification of the SEC.

If the securities company prepares documents in support of entries and/or records entries inconsistent to the truth, the auditor shall disclose the facts essential to the accounts which affect the financial statement in the auditing report in which the auditor has to sign his name for the purpose of declaring his opinion.

The Office shall have the power to withdraw its approval of the auditor who fails to comply with the provisions of the first or second paragraph.

**Section 108.** A securities company shall publish particulars or disclose any other information concerning the securities company in accordance with the rules and the time specified by the Office. Such publications or disclosure shall be displayed in an open place at the office of such securities company. A report together with a copy of such publications or disclosure of such information shall be submitted to the Office.

**Section 109.** The Office may require any securities company to submit any report or present any document for an interval period or from time to time as specified by the Office and may also require an explanation to elaborate or clarify such reports or documents in accordance with the rules and within the time prescribed by the notification of the Capital Market Supervisory Board.

The reports and documents submitted or presented or the explanations to elaborate or clarify in accordance with the first paragraph shall be prepared completely and accurately.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 110.** A securities company shall open its office for business during business hours and close its office on the days specified by the Office, unless permission has been granted by the Office to open or close its office at other hours or days.

**Section 111.** The provisions of Section 94, Section 98(1), (7), (8) and (9), Section 104, Section 106, Section 107, Section 108 and Section 110 shall not apply to financial institutions established under other laws and granted licenses in accordance with Section 90.

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**Section 111/1.**<sup>82</sup> When a securities company become a debtor pursuant to judgment, a debtor under receivership or is ordered by the government agency or any regulatory body under any other law to suspend its business either in whole or in part, the provisions of Section 43, Section 44, Section 45 and Section 46 of the Derivatives Act B.E. 2546 shall apply *mutatis mutandis* to the customers and the assets deemed to be owned by the customers of the securities company, as the case may be. In this regard, the items and the amount of assets as indicated in the list prepared by the securities company in accordance with the rules prescribed by the notification of the Capital Market Supervisory Board, are presumed to be correct, unless proven otherwise.

For the purpose of this section,

“customer” means:

(1) any person who uses the securities business service provided by a securities company in the category of brokerage or any other categories of securities business as prescribed by the notification of the Capital Market Supervisory Board, and holds a net claim against such securities company with a right to claim money, securities, financial instrument or any other assets received, acquired or held by the securities company for the account of such person;

(2) any person other than person in (1) who holds a net claim against such securities company arising from securities trading in the Securities Exchange or securities trading centre, which the securities company has entered into for the benefit of the person in (1).

“asset deemed to be owned by customer” means:

(1) all assets of a customer and any other assets acquired in substitution for the customer’s assets, including interest arising therefrom which are in the possession of or under the power to order or dispose by the securities company arising from the securities business in the category of securities brokerage or any other categories of securities business as prescribed by the notification of the Capital Market Supervisory Board;

(2) securities or any other financial instruments held by a securities company in a manner of owner, issued by the same juristic person or the same mutual fund management project, in the same class and type as those of the customer, in the amount necessary for return of such securities or financial instruments in the same class and type to the customer according to the right to claim which the customer has against the securities company.

**DIVISION 3**  
**Securities Brokerage**

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**Section 112.** In undertaking the securities brokerage, a securities company shall enter into a written agreement with the customers who appoint it to act as a securities broker. In this regard, the Capital Market Supervisory Board may prescribe essential elements of the agreement in order to ensure fairness to the parties to the agreement.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 113.**<sup>83</sup> In undertaking the securities brokerage, a securities company shall comply with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

**DIVISION 4**  
**Securities Tradeing**

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**Section 114.** In undertaking the securities trading, a securities company shall comply with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**DIVISION 5**  
**Investment Advisor Service**

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**Section 115.** In operating the business of investment advisor, a securities company shall comply with the rules, conditions and procedures as Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also specify fees

or service charges which the securities company may charge its customers for performing investment advisor service.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

## DIVISION 6

### Securities Underwriting

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**Section 116.** In underwriting of securities, a securities company shall comply with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also specify fees or service charges which the securities company may charge its customers for underwriting of securities.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

## DIVISION 7

### Mutual Fund Management

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**Section 117.** In management of a mutual fund, a securities company may set up and manage a mutual fund only when its application therefor is approved by the Office in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 118.** In applying to set up a mutual fund under Section 117, a securities company shall also submit the following documents:

- (1) details of the mutual fund project according to the particulars prescribed by the notification of the Office;
- (2) draft commitment between the unitholders and the securities company; and
- (3) draft agreement on appointment of the mutual fund trustee.

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**Section 119.** The commitment between the unitholders and the securities company shall contain at least the following essential provisions:

- (1) powers, duties and responsibilities of the securities company;
- (2) appointment, conditions for replacement, and remuneration of the mutual fund trustee;
- (3) rates and payment method of fees and remuneration for the mutual fund management;
- (4) rights of the unitholders;
- (5) dissolution of the mutual fund either by expiration of the mutual fund project or due to any other reason; and
- (6) other particulars as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 120.** The commitment referred to in Section 119 and the agreement on appointment of a mutual fund trustee shall not contain any unfair limitation of liabilities of the securities company and of the mutual fund trustee towards the unitholders.

Any provisions in the commitment or in the agreement which are contrary to the provisions of the first paragraph shall be void.

**Section 121.** A mutual fund trustee shall be a commercial bank or a financial institution which has qualifications as prescribed by the notification of the Office.

In issuing the notification under the first paragraph, the Office shall specify the following important matters:

- (1) capital fund, net total assets and business standing of the person who will become the mutual fund trustee;
- (2) relationship between the mutual fund trustee and the securities company; and
- (3) arrangement of organizational structure and internal controls necessary for fulfilling the duties of the mutual fund trustee.

**Section 122.** When an approval has been given to a securities company to set up and manage a mutual fund in accordance with Section 117 and prior to the offer for

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sale of investment units to the public, the securities company shall arrange for the appointment of a mutual fund trustee.

**Section 123.** The offer for sale of investment units to the public shall be made only after a securities company has delivered or distributed a prospectus containing the date of approval for the setting up and the management of the mutual fund.

The prospectus shall be in the form as prescribed by the notification of the Office and wherever there are corresponding particulars in the prospectus and the details of the mutual fund project, the essential facts stated therein shall be resemble.

**Section 124.** Money received from the sale of investment units of each mutual fund project shall constitute a pool of assets which the securities company shall be required to register with the Office as a mutual fund in accordance with the rules and procedures as prescribed by the notification of the Capital Market Supervisory Board.

The registered mutual fund shall be a juristic person with the objective of enabling the securities company to make an investment in accordance with the approved mutual fund project in which case the securities company shall be responsible for the operation of the mutual fund.

The mutual fund under the second paragraph shall have the same nationality as the securities company responsible for the operation of the mutual fund.

["Capital Market Supervisory Board" is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 125.** In the management of a mutual fund, the securities company shall proceed as follows:

- (1) manage the mutual fund strictly in accordance with the approved mutual fund project and the commitment made with the unitholders;
- (2) deposit the assets of the mutual fund into the custody of the mutual fund trustee;
- (3) prepare correct and complete accounts of investments of the mutual fund;
- (4) prepare investment reports of the mutual fund for the mutual fund trustee in accordance with the rules and procedures prescribed by the notification of the Office;

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(5) prepare and maintain a unitholders register in accordance with the rules and procedures prescribed by the notification of the Office with the approval from the Capital Market Supervisory Board; and

(6) arrange for the collection of returns on investments of the assets of the mutual fund and deposit them into the custody of the mutual fund trustee.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 126.** In the management of a mutual fund, the securities company shall be prohibited from:

(1) engaging in any act which may create a conflict of interests with the unitholders as prescribed by the notification of the Office;

(2) investing in or holding shares of the securities company responsible for the management of that mutual fund;

(3) investing in or holding investment units of other mutual funds managed by the same securities company;

(4) investing in or holding securities of any company exceeding the ratio prescribed by the notification of the Office; in this regard, the Office may set a requirement in accordance with the type of securities or the type of business of such company; and

(5)<sup>84</sup> borrowing in the name of the mutual fund or creating any encumbrances on the assets of the mutual fund, except for the encumbrance under futures contracts or under the rules, conditions and procedures prescribed by the notification of the SEC.

In issuing the notifications under subsection (4), the Office shall have the power to set requirements to be observed by the securities company for each or all of the mutual funds for whose operations the securities company is responsible.

**Section 127.** The mutual fund supervisor shall have the power and duty to:

(1) ensure that the securities company strictly complies with the provisions of Section 125;

(2) accept into custody assets of the mutual fund and separate them from other assets as well as ensure the disbursement of the mutual fund as specified in the mutual fund project;

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<sup>84</sup> Section 126 (5) amended by the Securities and Exchange Act (No. 3) B.E. 2546

(3) prepare deposit and payment accounts of the assets of the mutual fund;

(4) prepare a report to the Office in the event that the securities company has acted or omitted to act which has caused damage to the mutual fund or has not acted in accordance with Section 125; and

(5) file a legal action in court to cause the securities company to perform its duties or to claim compensation for damage from the securities company for the benefit of unitholders as a whole or when instructed by the Office.

Expenses incurred by such legal action for the purpose of the unitholders of any mutual fund shall be paid from the assets of that mutual fund.

**Section 128.** When the securities company acts or omits to act which causes damage to the mutual fund or fails to perform its duties in accordance with Section 125, the mutual fund trustee shall prepare a detailed report concerning such matter and submit it to the Office within five days from the date on which the mutual fund supervisor has knowledge of such event.

When the Office receives the report under the first paragraph and considers that the act of the securities company may have an adverse effect on the interests of unitholders as a whole, the Office shall have the power to order the securities company to rectify the said act or to refrain from doing the act which may have such adverse effect or which is a violation of the duties of the securities company as referred to in Section 125.

When the securities company fails to comply with the order of the Office given under the second paragraph, the Office shall have the power to:

(1) remove the securities company responsible for the operation of the mutual fund and replace it with another securities company; in this regard, the replacing securities company shall be deemed to assume all rights and obligations of the securities company thus removed; and

(2) order the securities company to dissolve the mutual fund.

**Section 129.** In the management of a mutual fund, the securities company shall proceed in accordance with an approved mutual fund project.

Amendment to the mutual fund project or alteration in the management method, if not made through the resolution by the majority of the unitholders who hold more than half of all that mutual fund's investment units sold, shall require an approval from the Office.

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When the amendment or the alteration is made through a resolution of the unitholders, the securities company shall submit a report thereof to the Office within fifteen days from the date of the resolution.

The securities company shall notify all the unitholders of such amendment or alteration, and shall publish them in at least one local daily newspaper within fifteen days from the date on which the approval is given by the Office or the date on which the resolution is passed, as the case may be.

**Section 130.** Upon the dissolution of the mutual fund, the securities company shall appoint a liquidator to collect and distribute assets to the unitholders as well as to do all other acts as may be necessary for the completion of liquidation in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

The liquidator under the first paragraph shall be given prior approval from the Office.

Expenses and remuneration in liquidation of any mutual fund shall be paid from the assets of that mutual fund.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 131.** After completion of the liquidation, the liquidator shall apply for registration of the dissolution of the mutual fund with the Office.

The liquidator shall transfer ownership of any assets remaining after registration of the dissolution of the mutual fund to the Office.

**Section 132.** The provisions of Section 47, Section 48, Section 80, Section 81, Section 82, Section 83, Section 84, Section 85, Section 86, Section 87 and Section 89 including the related penalty provisions shall apply *mutatis mutandis* to the offer for sale of investment units to the public and to legal action taken against the mutual fund trustee.

Expenses incurred from such legal action for the purpose of any mutual fund shall be paid from the assets of that mutual fund.

## DIVISION 8

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## Private Fund Management<sup>85</sup>

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**Section 133.**<sup>86</sup> In managing a private fund, the securities company shall manage it with honesty and care to preserve the interests of the person who has authorized the management of the private fund, using knowledge and competence of a professional.

The securities company shall enter into a written agreement with a person or a group of persons who has authorized the securities company to manage the private fund, and shall manage the private fund in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board shall have the power to specify the particulars which are essential to the agreement.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 134.**<sup>87</sup> In managing a private fund, the securities company shall provide a private fund manager with the approval of the Office in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

The provisions of the first paragraph of Section 133 shall apply *mutatis mutandis* to the performance of duties of the private fund manager.

The private fund manager shall manage the private fund in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

The Office shall have the power to revoke the approval for a private fund manager who fails to comply with the provisions of the second paragraph or the third paragraph.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

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<sup>85</sup> Division 8 Private Fund Management, Section 133 through 140 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>86</sup> Section 133 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>87</sup> Section 134 amended by the Securities and Exchange Act (No. 2) B.E. 2542

**Section 135.**<sup>88</sup> In managing a private fund, the securities company shall arrange for the appointment of a custodian with an approval of the Office in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

The securities company may act as a custodian for the person who has authorized it to manage the private fund for which it is responsible, upon the consent of the person so authorizing and approval of the Office, in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 136.**<sup>89</sup> The securities company shall segregate the assets of the person authorizing the management of the private fund from its assets, and in the event that the securities company is not a custodian of the person authorizing the management of the private fund for which it is responsible, the securities company shall deposit the assets with the custodian approved under the first paragraph of Section 135 within the business day following the day on which the securities company received such assets or within the time as prescribed by the notification of the Office.

**Section 137.**<sup>90</sup> In accepting assets into custody, the custodian shall segregate the deposited assets from its own assets, and shall deal with the deposited assets in accordance with the rules, conditions and procedures prescribed by the notification of the Office.

Any custodian who fails to comply with the provisions of the first paragraph shall be subject to revocation by the Office of the approval granted for such custodian.

**Section 138.**<sup>91</sup> All assets of the person authorizing the management of the private fund shall be in the name of the person authorizing such management and the name of the securities company as the representative, unless otherwise permitted by the Office in accordance with the rules, conditions and procedures prescribed by the notification of the Office.

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<sup>88</sup> Section 135 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>89</sup> Section 136 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>90</sup> Section 137 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>91</sup> Section 138 amended by the Securities and Exchange Act (No. 2) B.E. 2542

**Section 139.**<sup>92</sup> In managing a private fund, the securities company shall be prohibited from:

(1) investing in any assets for the person authorizing the management of the private fund other than those agreed upon in the agreement authorizing the management of the private fund;

(2) accepting fees or any service charges from the person authorizing the management of the private fund, except for fees or service charges specified at the rate and according to procedures in the agreement authorizing the management of the private fund;

(3) purchasing or selling assets in its own name for the person authorizing the management of the private fund without prior notice of such act;

(4) making a representation to the person authorizing the management of the private fund that there will be a profit or return at a certain rate, or making a promise that the loss shall not be more than the rate already specified, except for a representation given in accordance with the rules, conditions and procedures as prescribed by the notification of the Office; or

(5) doing any other act that may cause a conflict of interest as prescribed by the notification of the Office.

**Section 140.**<sup>93</sup> The securities company shall prepare an account showing the financial condition of each private fund in the form prescribed by the notification of the Office and shall keep the supporting documents which evidence the correctness of such account.

In managing a private fund of the nature prescribed by the notification of the Office, the securities company shall prepare financial statements of the private fund pursuant to its actual conditions, and shall comply with the rules, conditions and procedures specified by the notification of the Capital Market Supervisory Board, which shall take into account the standards approved by the Board of Auditing Practices under the law governing auditors.

The financial statements under the second paragraph must be examined and given opinion by an auditor approved by the Office, and such auditor must not be a director, staff member or employee of such securities company.

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<sup>92</sup> Section 139 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>93</sup> Section 140 amended by the Securities and Exchange Act (No. 2) B.E. 2542

The auditor of the private fund must adhere to the code of conduct and perform the auditing to provide opinion on the financial statements in compliance with the requirements of the law relating to auditors and additional requirements as prescribed by the notification of the Capital Market Supervisory Board.

In the case where the securities company prepares the supporting documents for entry into accounts or disclose information in the financial statements inaccurately or incompletely, the auditor shall disclose the facts and essential impact on the financial statements in his audit report on which he is to sign in order to give his opinion.

Any auditor who fails to comply with the provisions of the fourth paragraph or the fifth paragraph shall be subject to revocation by the Office of the approval given for such auditor.

["Capital Market Supervisory Board" is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

## DIVISION 9

### Revocation of License and Dissolution of Securities Company

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**Section 141.** If the Office finds that any securities company:

- (1) does not appropriately prepare accounts or does not complete the preparation of accounts within a reasonable period of time; or
- (2) act or omits to act which is prescribed by the notification of the Office with the approval of the Capital Market Supervisory Board;

the Office shall have the power to order the securities company to rectify such act or to act or to refrain from doing any act as the Office may deem appropriate within a specified period of time.

["Capital Market Supervisory Board" is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 142.** Where there is evidence appear to the Office that any securities company's condition or operation is in a manner that damage may be caused to the public interest, the Office shall have the power to order such securities company to rectify such condition or operation within the period of time specified by the Office.

**Section 143.** When the Capital Market Supervisory Board finds that any securities company's condition or operation is in a manner that serious damage may be

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caused to the public interest, the Capital Market Supervisory Board shall have the power to order such securities company to take measures to rectify its management or to take any other action within the period of time specified by the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also impose any condition on the securities company for the purpose of rectifying the condition or operation of the securities company.

When any securities company fails or is unable to rectify its operation, the Minister shall have the power to revoke the license of such securities company upon the recommendation of the SEC.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 144.** Where there is evidence appear to the Office that any securities company’s condition or operation is in a manner that damage may be caused to the public interest, or where the directors, managers or persons responsible for the operation of any securities company fail to comply with the order of the Office under Section 141 or Section 142, the Office shall have the power to order such securities company to remove its directors, managers or persons responsible for its operation who have caused such events. In this regard, such securities company with the approval of the Office shall appoint other persons to replace the persons so removed within thirty days from the date of removal.

**Section 145.** Where any securities company fails to remove such persons or removes but fails to appoint other persons to replace within thirty days from the date of removal, the Office with the approval of the Capital Market Supervisory Board shall have the power to order as follows:

- (1) remove its directors, managers or persons responsible for the operation of the securities company whom the securities company fails to remove;
- (2) appoint one or more persons to replace the persons so removed for a period of not longer than three years. The persons so appointed shall be entitled to remuneration to be paid from the assets of the securities company as specified by the Capital Market Supervisory Board. During the period in which the persons so appointed hold office, shareholders of the securities company shall not pass a resolution revoking or changing the order of the Office.

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For the purpose of this Section, the order of the Office issued under the first paragraph shall be deemed a resolution of a shareholder meeting under the Civil and Commercial Code or the law governing public limited companies, as the case may be.

The persons so removed shall not involve or carry out any operation, directly or indirectly, in that securities company, and shall provide assistance and facts to the persons so appointed.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 146.** Where any securities company fails to comply with the order of the Office given in accordance with Section 144, the Office shall report the matter to the SEC. In such event, the Minister upon the recommendation of the SEC, shall have the power to revoke the license of the securities company.

**Section 147.** During any two-year period, if any securities company does not undertake securities business of the type so licensed in the volume as specified in the SEC notification, the Minister shall have the power to revoke the license to operate all or any type of securities businesses so licensed upon the recommendation of the SEC.

**Section 148.** When the Minister orders the revocation of all types of securities businesses in accordance with Section 143, Section 146 or Section 147, the securities company whose license has been revoked shall be dissolved.

The provisions of the first paragraph shall not apply to the financial institutions which can undertake securities businesses under other laws.

**Section 149.** In revoking a license of a securities company, the Minister shall notify such order in writing to the securities company and shall post such order in an open place at the office of the securities company and shall publish the order in the Government Gazette and in at least one local daily newspaper.

**Section 150.** Any securities company wishing to discontinue operating a securities business of the type so licensed shall seek an approval from the Minister through the SEC. In giving an approval, the Minister may impose any condition.

**Section 151.** When any securities company has discontinued its operation or ceased operating securities businesses, the securities company shall complete the purchase,

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sale or exchange of securities, settlement and delivery of the outstanding securities within the period of time specified by the Office.

**Section 152.** Upon the dissolution of a securities company in accordance with Section 148, the securities company shall be liquidated and for this purpose the Office shall appoint a liquidator.

Liquidation shall be done in accordance with the provisions of the Civil and Commercial Code on the liquidation of limited companies or the law governing public limited companies respecting liquidation of public limited companies, as the case may be, provided that the power and duty of the general meeting shall be the power and duty of the Office.

Expenses for liquidation of any securities company shall be paid from the assets of that securities company.

## CHAPTER 5 SECURITIES EXCHANGE

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### DIVISION 1 Establishment

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**Section 153.** There shall be a Securities Exchange referred to as the “Securities Exchange of Thailand” with the object of undertaking the securities exchange operations, without the distribution of profits, as follows.

(1) Providing the service of being a centre for trading of listed securities as well as providing the system and method for trading of securities in such centre;

(2) Undertaking any businesses relating to the Securities Exchange, which are the rendering of services relating to listed securities by acting as a clearing house, securities depository centre, securities registrar, the rendering of services on securities data or similar businesses; and

(3) Undertaking any businesses other than (1) and (2) with the approval of the SEC.

The Securities Exchange under the first paragraph shall be a juristic person.

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**Section 154.** The Securities Exchange shall have the power to act within the scope of its objectives as referred to in Section 153. Such power shall include the power to:

(1) acquire, own, hold any proprietary rights, possess, rent or lease, hire purchase, grant of hire purchase, transfer or accept transfer of the rights to lease or hire purchase, mortgage or accept mortgage, sell, or dispose by any other mean movable or immovable properties; and

(2) borrow or lend money as well as make investment for benefit.

**Section 155.** No person other than the Securities Exchange which is established under this Act shall engage in the business of securities exchange or similar businesses.

**Section 156.** No person other than the Securities Exchange shall, in the operation of its business, make use of the name or the description of “Securities Exchange” or “Stock Exchange” or other words having the same meaning.

**Section 157.** Securities which may be traded in the Securities Exchange shall be listed securities in accordance with Division 4 of this Chapter.

**Section 158.** A securities company which is to act as a broker or an agent for the trading of securities in the Securities Exchange must be a member of the Securities Exchange.

## DIVISION 2

### Board of Directors of the Securities Exchange

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**Section 159.** There shall be a board of directors of the Securities Exchange comprising not more than five persons appointed by the SEC and not more than five persons elected by members referred to in Section 158 to serve as directors; and the manager of the Securities Exchange shall ex officio be director of the Securities Exchange.

The persons appointed by the SEC under the first paragraph shall have an excellent knowledge of, and experience in, the operations of the Securities Exchange, securities or financial businesses and at least one person shall be a senior executive of a company whose securities are listed in the Securities Exchange.

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The board of directors of the Securities Exchange shall elect a director, other than the manager of the Securities Exchange, to be the Chairperson of the board and may also elect another director of the Securities Exchange to be the vice-Chairperson.

**Section 160.** Directors of the Securities Exchange shall have the qualifications and shall not possess any of the prohibited characteristics as follows:

- (1) being of Thai nationality;
- (2) not being or having been bankrupt;
- (3) not having been imprisoned by a final court judgment, unless the offence is committed through negligence, or a petty offence;
- (4) not being a government official holding a permanent position or receiving salary, a political official or an officer or employee of any government agency or state enterprise or local administration or an elected member of a local assembly or local administration;
- (5) not being a director who has been removed from the position by a resolution of the SEC.

**Section 161.** Directors of the Securities Exchange, except for the manager of the Securities Exchange, shall hold office for a term of two years. When one year of the first term of office has lapsed, two of the directors who are appointed by SEC and other two of the directors who are elected by the member shall be retired by means of drawing lots. Vacation from the office by means of drawing lots shall be deemed vacation upon the expiration of the term of office.

The directors who vacate office upon the expiration of the term of office may be re-appointed but shall not hold office for more than two consecutive terms.

**Section 162.** In addition to the expiration of the term of office, the office of the director of the Securities Exchange shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) removal by resolution of the SEC; or
- (4) lack of qualifications or being under any prohibition prescribed in Section 160.

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When the office of a director of the Securities Exchange is vacated prior to the expiration of the term of office, the SEC or the members under Section 158 shall appoint or elect another person to assume the office, as the case may be.

**Section 163.** The provisions of the second paragraph of Section 10, the second paragraph of Section 11, Section 12 and Section 13 shall apply *mutatis mutandis*.

**Section 164.** The board of directors of the Securities Exchange shall appoint the manager of the Securities Exchange who shall receive salary and other remunerations as specified by the board of directors of the Securities Exchange.

The manager of the Securities Exchange shall hold office for a term of not exceeding four years and may be reappointed.

**Section 165.** The manager of the Securities Exchange shall:

- (1) have qualifications and not be under any of the prohibitions prescribed in Section 160; and
- (2) be able to work full-time for the Securities Exchange.

**Section 166.** Apart from the expiration of the term of office, the office of the manager of the Securities Exchange shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of sixty;
- (4) removal by resolution of the board of directors of the Securities Exchange; or
- (5) lack of qualifications or being under prohibitions prescribed in Section 160.

The resolution of the board of directors of the Securities Exchange removing the manager of the Securities Exchange from the office shall be passed by not less than three fourths of the votes of all directors of the Securities Exchange excluding the manager of the Securities Exchange.

**Section 167.** The manager of the Securities Exchange has the duty to manage the operation of the Securities Exchange in accordance with the policy and rules

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and regulations of the board of directors of the Securities Exchange and has command authority over the officers and employees of the Securities Exchange.

In the management of the operation of the Securities Exchange, the manager of the Securities Exchange shall be responsible to the board of directors of the Securities Exchange.

**Section 168.** The manager of the Securities Exchange shall be the representative of the Securities Exchange in the business of the Securities Exchange relating to third persons, and for this purpose, the manager of the Securities Exchange may authorize any person to perform any act to the extent that such authorization is not contrary to the rules or regulations specified by the Board of the Directors of the Securities Exchange.

The authorization under the first paragraph shall be made in writing.

**Section 169.** When the office of the manager of the Securities Exchange has become vacant or when the manager cannot fulfill his duty, the board of directors of the Securities Exchange shall appoint one of the directors or officers of the Securities Exchange to temporarily perform the duty of the manager of the Securities Exchange. In this regard, such person shall have the powers and duties of the manager of the Securities Exchange.

**Section 170.** The board of directors of the Securities Exchange shall have the authority to formulate policies, supervise the operation of the Securities Exchange and perform any other function in accordance with this Act.

The authority of the board of directors of the Securities Exchange under the first paragraph shall include the issuing of rules or regulations on the following matters:

(1) rules, conditions and procedures concerning the acceptance and the withdrawal of listed securities;

(2) rates for fees charged by brokers or agents in the trading of listed securities;

(3) rules and procedures concerning membership of the Securities Exchange, election of the directors of the Securities Exchange in accordance with Section 159, the numbers, procedures for admission, qualifications, rights and duties, disciplines, punishment, meetings, as well as the transfer and termination of membership in the Securities Exchange;

(4) determination of the admission fees for membership, subscription fees, deposits and other service charges payable by members to the Securities Exchange;

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(5) rules concerning additional requirements for accounting and auditing to the extent that such requirements are not contrary to the standards as specified by a professional institute approved by the relevant government authorities;

(6) announcement of the names of the auditors who have been given an approval by the board of directors of the Securities Exchange to audit the accounts of the companies whose securities are listed in the Securities Exchange;

(7) rules, conditions and procedures concerning the preparation of the register of the listed securities' holders, disclosure of the financial condition and the business standing of the companies whose securities are listed in the Securities Exchange;

(8) rules, conditions and procedures concerning the preparation of agreements appointing a broker or agent for the trading of listed securities in the Securities Exchange for customers and securities companies which are not members;

(9) rules, conditions and procedures concerning the trading of listed securities in the Securities Exchange, the permission for members to trade listed securities outside the Securities Exchange and the settlement and delivery of listed securities which are traded in the Securities Exchange;

(10) rules, conditions and procedures concerning a temporary suspension of trading of listed securities in the Securities Exchange;

(11) rules, conditions and procedures concerning the inspection of documentation and accounts of members;

(12) daily trading hours and holidays for the trading of listed securities in the Securities Exchange;

(13) rules, conditions and procedures concerning the preparation and the disclosure of reports on the holding of securities, and the determination of time for certifying the transfer of securities and issuing securities certificates;

(14) placement, appointment, removal of officers and employees, disciplines and punishment for officers and employees of the Securities Exchange, as well as the petition for grievances and the rules and procedures for the operation of the Securities Exchange;

(15) determination of positions, scales of salaries, wages and bonuses of officers and employees;

(16) welfare and assistance to present and retiring officers and employees including their families; and

(17) any other matters necessary for the operation of the Securities Exchange.

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Prior to the determination or alteration and modification of the rules or regulations under (2), (3), (4), (8), (9), (10), (11), and (12), the hearing of opinion from the meeting of the members is required and the determination or alteration and modification of the rules or regulations under (1), (2), (3), (4), (5), (6), (7), (11) and (17) shall come into force only after an approval has been given by the SEC.

**Section 170/1.**<sup>94</sup> When it is evident to the SEC that the rules of the Securities Exchange may cause damage to or affect the public interest, or are insufficient to protect and maintain investor confidence, the SEC shall have the power to order the Securities Exchange to issue additional rules, cancel, alter or modify the existing rules.

**Section 171.** The board of directors of the Securities Exchange shall have the power to:

(1) accept as listed securities the securities which are qualified in accordance with the rules, conditions and procedures concerning the acceptance of listed securities under Section 170(1);

(2) temporarily suspend the trading of any listed securities in the Securities Exchange for a specified period as it deems fit;

(3) temporarily prohibit any member from trading listed securities in the Securities Exchange for a specified period as it deems fit; and

(4) withdraw the listed securities from the Securities Exchange in accordance with the rules, conditions and procedures concerning the withdrawal of listed securities under Section 170(1).

The Securities Exchange shall post the announcement of the acceptance and withdrawal of listed securities in a open place at the office of the Securities Exchange and shall disclose the matter to the public prior to the date on which such securities are accepted as or withdrawn from being listed securities.

**Section 172.** For orderly operation of the Securities Exchange and protection of the interests of investors, the board of directors of the Securities Exchange shall have the power to order a company whose securities are listed in the Securities Exchange to act or to omit any act concerning any matter which is necessary and reasonable.

Where a company whose securities are listed in the Securities Exchange fails to comply with the order of the board of directors of the Securities Exchange referred to in the first paragraph, the board of directors of the Securities Exchange may exercise the power under Section 171(2) or (4).

**Section 173.** When the board of directors of the Securities Exchange has ordered a withdrawal of any listed securities because the company disobeys the order under Section 172, the holders of such withdrawn securities shall have the right to claim damages from the director, manager or person responsible for the operation of such company who causes the disobedience of such order.

The holder of securities who has the right to claim damages as referred to in the first paragraph shall have acquired such securities prior to the withdrawal, and shall neither have participated in nor given consent or permission to the violation of such order.

**Section 174.** The liability for damages as referred to in Section 173 shall be in the amount equal to the reduced value of securities from the last selling price of such securities in the Securities Exchange.

**Section 175.** The Securities Exchange shall have the power to file a claim in court for damages as referred to in Section 174 for the benefit of the securities holders as a whole.

**Section 176.** The board of directors of the Securities Exchange shall have the power to appoint a sub-committee of the Securities Exchange to carry out any business of the Securities Exchange as assigned by the board of directors of the Securities Exchange, and for this purpose the provisions of Section 12 shall apply *mutatis mutandis*.

The sub-committee of the Securities Exchange shall receive remuneration as specified by the board of directors of the Securities Exchange.

**Section 177.** The Chairperson, vice-Chairperson and directors of the Securities Exchange shall receive remuneration as specified by a meeting of members of the Securities Exchange.

### DIVISION 3 Operation

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**Section 178.** The board of directors of the Securities Exchange shall submit to a meeting of members of the Securities Exchange within four months from the end of the calendar year a balance sheet and an annual income and expense account duly certified by the auditor.

**Section 179.** The meeting of members of the Securities Exchange shall appoint an auditor from among the persons nominated by the board of directors of the Securities Exchange and shall determine the remuneration for such auditor.

The auditor shall be a licensed auditor under the law governing auditors and shall not be a director, manager, officer or employee of the Securities Exchange.

**Section 180.** The auditor shall have the power to examine all accounts and documents of the Securities Exchange and request explanation from the directors, manager, officers or employees of the Securities Exchange.

**Section 181.** The board of directors of the Securities Exchange shall submit to the Office a balance sheet with an annual income and expense account as well as prepare reports and submit documents to the Office in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 182.** The Securities Exchange shall pay money to the Office as a subsidy at the rate specified by the SEC.

**Section 183.** In order to protect the benefit or interests of the public, the Securities Exchange or any person authorized by the board of directors of the Securities Exchange shall have the power to disclose information of a company whose securities are listed in the Securities Exchange or of a securities company which is a member of the Securities Exchange to the public in accordance with the rules, conditions and procedures as prescribed by the notification of the board of directors of the Securities Exchange.

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**Section 184.** The purchase or sale of listed securities in the Securities Exchange shall be conducted by a securities company which is a member of the Securities Exchange.

In the purchase or sale of securities as referred to in the first paragraph, a member may act as a broker or agent for any person or securities company which is not a member.

For the purchase or sale of listed securities on the Securities Exchange which are not shares, the board of directors of the Securities Exchange may allow person other than the securities company which is a member of the Securities Exchange to conduct the purchase or sale of such listed securities.<sup>95</sup>

**Section 185.** No member of the Securities Exchange shall purchase or sell listed securities outside the Securities Exchange regardless of whether it is acting as a broker, agent or in its own name, unless permission is obtained from the Securities Exchange.

**Section 186.** In order to prevent damage to the public or the economy of the country, the SEC shall have the power to:

(1) temporarily suspend the trading of all listed securities in the Securities Exchange for a specified period as it deems appropriate; and

(2) instruct the board of directors or the manager of the Securities Exchange to do any act or omit to do any act as it deems appropriate.

In exercising the power under (1), the SEC shall give a written order which shall be posted in an open place at the office of the Securities Exchange as well as report the matter to the Minister immediately. In this regard, the Minister shall have the power to order any change or modification in such order.

**Section 187.** When there has been a breakdown in the equipment used in the trading system of listed securities in the Securities Exchange which prevents the normal trading of listed securities in the Securities Exchange, the manager of the Securities Exchange shall have the power to order a temporary suspension of trading of all listed securities in the Securities Exchange, and shall submit a detailed report of the event to the SEC immediately.

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<sup>95</sup> Section 184 paragraph three added by the Securities and Exchange Act (No. 4)

**Section 188.** Upon the termination of membership of any member, the Securities Exchange shall permit such member to complete transactions in progress.

**DIVISION 4**  
**Listed Securities**

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**Section 189.** Any issuer of securities who wishes to have its securities traded in the Securities Exchange shall proceed to have such securities listed in the Securities Exchange.

Upon receiving the application for listing, the Securities Exchange shall consider and submit its opinion to the board of directors of the Securities Exchange for making an order accepting or refusing such securities as listed securities.

**Section 190.**<sup>96</sup> Where delivery, transfer, retention or return of registered securities is needed, the securities of the same juristic person or the same mutual fund project, with the same class and type and in the same amount, may be used in place.

**Section 191.** The company issuing securities which are listed in the Securities Exchange shall be required to keep a register of securities holders in accordance with the rules and procedures as specified by the board of directors of the Securities Exchange.

In keeping the register referred to in the first paragraph, the issuing company may appoint the Securities Exchange or any other person who has been given a license to provide services of being a securities registrar in accordance with Section 221 to carry out such duty.

**Section 192.** When shareholders who collectively hold not less than twenty-five per cent of the total amount of sold shares in the company issuing securities which are listed in the Securities Exchange make a request to the Securities Exchange to act as securities registrar of the company, the Securities Exchange shall accept such request. In such case, the issuing company shall deliver relevant documents to the Securities Exchange within sixty days from the date on which the Securities Exchange has notified its acceptance

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<sup>96</sup>

Section 190 amended by the Securities and Exchange Act (No. 4) B.E. 2551

to the issuing company and after the lapse of such period of time the issuing company can no longer act as the registrar.

**Section 193.** When the company issuing securities which are listed in the Securities Exchange has determined the date on which it shall not accept the entry of the transfer of name securities into the register prior to the shareholder meeting and there are securities holders who have requested the registration of transfer prior to the date of non-acceptance, the issuing company shall complete the registration of the transfer prior to the date of the shareholder meeting.

**Section 194.** No company issuing securities which are listed in the Securities Exchange shall pay dividends or other benefits to persons other than the persons whose names are entered in the securities register and in cases where such securities are shares, no issuing company shall allow such other person to vote in the shareholder meeting.

**Section 195.**<sup>97</sup> When the owner of securities has entered into an agreement allowing a securities company to retain listed securities as collateral for a loan, the securities company shall:

(1) keep an account of such listed securities in accordance with the form specified by the Securities Exchange and shall make a complete and correct record of entry;

(2) maintain, at all times, listed securities corresponding with the category, type and net amount as appear in the securities account under (1), unless otherwise prescribed by the notification of the board of directors of the Securities Exchange, and shall return them to the borrower immediately upon the borrower having fully repaid the loan.

The provisions of Section 752 and Section 753 of the Civil and Commercial Code shall not apply to the retention of the listed securities as collateral for the repayment of a loan referred to in the first paragraph.

The provisions concerning pledge under the Civil and Commercial Code shall apply to the extent that they are not contrary to or inconsistent with the provisions of this Section and Section 196.

The securities company retaining listed securities as collateral for a loan in accordance with the first paragraph shall have preferential right over such securities in the similar manner as the pledgee.

**Section 196.**<sup>98</sup> Prior to enforcing the listed securities retained as collateral for a loan under Section 195, the lender shall notify the borrower in writing requiring him to make such repayment within a reasonable period of time. If the borrower fails to comply with such notice, the lender shall have the right to sell such retained securities on the Securities Exchange in accordance with the procedures specified by the Securities Exchange or by auction.

The provisions in paragraph one shall apply to the enforcement of pledge of the registered securities so pledged according to the Civil and Commercial Code *mutatis mutandis*.

**Section 197.** In issuing securities certificates, the securities registrar shall have the power to sign his name in the securities certificates in lieu of the signature of the directors of the company issuing securities which are listed in the Securities Exchange when authorized by such company.

**Section 198.** The provisions of Section 191, Section 192, Section 193, Section 194, Section 195 and Section 196 shall not apply to the following securities:

- (1) bonds issued by government organizations or state enterprises;
- (2) bills;
- (3) other securities as specified by the board of directors of the Securities Exchange.

**Section 199.** The provisions of Section 51, Section 52, Section 53 and Section 55 including related penalty provisions shall apply *mutatis mutandis* to the transfer and preparation of a listed securities register of the company issuing securities listed in the Securities Exchange which are not bills.

The provisions of Section 56, Section 57, Section 58, Section 59, Section 61 and Section 62 including related penalty provisions shall apply *mutatis mutandis* to the disclosure of information and to the auditor of the company issuing securities listed in the Securities Exchange which are not bonds issued by governmental organizations or state enterprises or any other securities as specified by the board of directors of the Securities Exchange. When such company has already prepared and submitted a report to the Office concerning the disclosure of information in accordance with Section 56, the company may submit a copy of such report to the Securities Exchange.

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<sup>98</sup> Section 196 amended by the Securities and Exchange Act (No. 4) B.E. 2551

When the provisions referred to in the first and second paragraphs specify the authority to the Office or the Capital Market Supervisory Board, such provisions shall be deemed to be the authority of the Securities Exchange or the Capital Market Supervisory Board, as the case may be.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 200.** The balance sheet and profit and loss account for any accounting period of a securities company or financial institution whose securities listed in the Securities Exchange which have been prepared in accordance with the form specified under the first paragraph of Section 106 or in accordance with the law relating to the operation of such financial institution, shall be the financial statements for the accounting period as specified in Section 199. The auditor who has been given an approval in accordance with Section 106 of the said law shall be deemed to be the auditor who has been given an approval by the Securities Exchange.

#### DIVISION 5

#### Settlement of Disputes concerning Securities Transactions

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**Section 201.** Where there is a dispute arising from or concerning to the purchase or sale of listed securities in the Securities Exchange either between members or between a member and its customers, the disputing parties may file a request for settlement by arbitrators to the Securities Exchange.

The arbitrators referred to in the first paragraph shall comprise a person appointed by the board of directors of the Securities Exchange as the president of the arbitral tribunal and other persons each of whom shall be appointed by a disputing party.

**Section 202.** The application in accordance with Section 201 shall be in the form specified by the Securities Exchange and shall at least contain the following details:

- (1) names and addresses of the disputing parties;
- (2) the issues in disputes; and
- (3) relevant documents and evidences.

**Section 203.** The law relating to arbitration shall apply to the deliberation and the settlement of disputes under Section 201 *mutatis mutandis*.

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CHAPTER 6  
SECURITIES TRADING CENTRE AND FUTURES AND OPTIONS CENTRE

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DIVISION 1  
Securities trading Centre

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**Section 204.** A securities trading centre may be established by not less than fifteen securities companies jointly applying for a license from the SEC for the purpose of trading securities which are not securities listed in the Securities Exchange.

**Section 205.** The application for a license to establish a securities trading centre in accordance with Section 204 shall be submitted to the SEC and shall have the following particulars:

- (1) name of the securities trading centre;
- (2) location of the office of the securities trading centre;
- (3) name of the securities companies which are founder members;
- (4) capital and sources of capital for operation;
- (5) regulations of the securities trading centre; and
- (6) other details as prescribed by the notification of the SEC.

The application referred to in the first paragraph shall be accompanied by the documents concerning the establishment agreement, regulations applicable to members and other documents prescribed by the notification of the SEC.

**Section 206.** The application for and the issuance of a license shall be in accordance with the rules, conditions and procedures prescribed by the notification of the SEC.

**Section 207.** The SEC shall have the power to determine a fee for a license for the establishment of a securities trading centre.

**Section 208.** A licensed securities trading centre shall be a juristic person.

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**Section 209.** No person shall engage in the business of securities trading centre or similar businesses unless a license has been obtained in accordance with this Division.

**Section 210.** After the establishment of a securities trading centre in accordance with Section 204, there shall be a board of directors of the centre comprising not more than nine members elected by the founding members.

The directors of the securities trading centre shall elect the Chairperson, vice-Chairperson, manager of the securities trading centre and other positions as deemed appropriate from among the directors referred to in the first paragraph.

Names and positions of the directors of the securities trading centre shall be submitted to the Capital Market Supervisory Board without delay.

["Capital Market Supervisory Board" is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 211.** When alterations and modifications have been made to the regulations of the securities trading centre applicable to members, the securities trading centre shall report such alterations and modifications to the SEC without delay.

**Section 212.<sup>99</sup> (Repealed)**

**Section 213.** The securities trading centre shall ensure that members enter into a commitment to comply with the provisions of this Act, or rules and regulations of such securities trading centre, or rules and regulations specified by the SEC. When there has been a violation of or non-compliance with such rules and regulations by a member, the securities trading centre shall punish such member.

The punishment referred to in the first paragraph shall be:

- (1) probation;
- (2) fine;
- (3) temporary prohibition from trading in the securities trading centre;
- (4) termination of membership.

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<sup>99</sup> Section 212 repealed by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 214.** A securities trading centre shall be dissolved in any of the following events:

- (1) events specified in the agreement establishing the securities trading centre as causes of dissolution;
- (2) a resolution by the members' meeting to dissolve;
- (3) the number of members has been reduced to less than fifteen and the SEC issues a resolution to dissolve;
- (4) bankruptcy; or
- (5) when there is a reasonable cause for the SEC to order the dissolution.

The dissolution in accordance with (1) and (2) shall be effective when approval is obtained from the SEC.

**Section 215.** After the dissolution of a securities trading centre, the remaining assets of the securities trading centre shall be equally distributed among members, unless otherwise specified in the agreement establishing the securities trading centre or the regulations applicable to members.

**Section 216.**<sup>100</sup> The provisions of Section 91, Section 158, Section 160, Section 161, Section 162, Section 163, Section 170/1, Section 186, Section 190, Section 193, Section 194, and Section 197 including related penalty provisions shall apply *mutatis mutandis*.

**Section 217.** The provisions of Section 167, Section 168, Section 170, Section 171, Section 172, Section 178, Section 179, Section 180, Section 181, Section 182, Section 183, Section 184, Section 187, Section 188, Section 189, Section 191, Section 195, Section 196, Section 198, Section 199, Section 200, Section 201, Section 202, and Section 203 including related penalty provisions shall apply *mutatis mutandis*.

When the provisions referred to in the first paragraph specify the powers and duties of the Securities Exchange, the board of directors or the manager of the Securities Exchange, such provisions shall be deemed to be the powers and duties of the securities trading centre, the board of directors or the manager of the securities trading centre, as the case may be.

## DIVISION 2

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<sup>100</sup> Section 216 amended by the Securities and Exchange Act (No. 4) B.E. 2551



## Futures and Options Centre

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**Section 218.** The establishment, operation, supervision and control of the operation of a futures and options centre shall be in accordance with the governing laws.

*Office of the Council of State*

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CHAPTER 7  
INSTITUTIONS RELATED TO SECURITIES BUSINESS

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DIVISION 1

Clearing House, Securities Depository Centre and Securities Registrar

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**Section 219.** No person shall operate the business of a clearing house unless a license has been obtained from the SEC.

A clearing house means a centre where services for the settlement and delivery of traded securities including related services are provided.

**Section 220.** No person shall operate the business of a securities depository centre unless a license has been obtained from the SEC.

A securities depository centre means a centre where services for the deposit and withdrawal of securities including related services for the purpose of account clearing.

**Section 221.** No person shall provide securities registrar service unless a license has been obtained from the SEC.

**Section 222.** The provisions of Section 206 and Section 207 including the related penalty provisions shall apply to a clearing house, a securities depository centre and a securities registrar *mutatis mutandis*.

**Section 223.** In the operation of a clearing house, a securities depository centre or a securities registrar, persons operating such businesses shall comply with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 223/1.**<sup>101</sup> Entering into an obligation or being a substitute for the party to the securities trading agreement by the clearing house and the placement of

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<sup>101</sup> Section 223/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

collateral, if undertaken in accordance with the clearing house's rules as approved by the Capital Market Supervisory Board, shall be binding and enforceable by law.

**Section 223/2.**<sup>102</sup> When the clearing house enters into an obligation under, or becomes a substitute for the party to, the securities trading agreement, the clearing house shall be bound by the rights and obligations with the member under the securities trading agreements for which it provides settlement and delivery services, regardless of whether such member has entered into securities trading agreement for its own accounts or for the accounts of others.

**Section 223/3.**<sup>103</sup> When the clearing house receives any asset from its members or has in its possession of such asset as collateral for settlement and delivery of securities, as a result of securities trading agreements of its members or its members' customers, or asset placed with the clearing house by any member for purposes of maintaining the integrity of the securities trading and settlement and delivery system, the provisions of Section 82 and Section 83 of the Derivatives Act B.E. 2546 shall apply *mutatis mutandis* to the clearing house in respect of the duty to look after and use of such asset.

**Section 223/4.**<sup>104</sup> When a petition is filed against a member in a bankruptcy court and the court issues a receivership order, the provisions of Section 84, Section 85, Section 86 and Section 87 of the Derivatives Act B.E. 2546 shall apply *mutatis mutandis* to the clearing house or the asset received by or had in possession of the clearing house under Section 223/3.

**Section 223/5.**<sup>105</sup> When the clearing house becomes a debtor by judgment, a debtor under receivership or is ordered by the government or any regulatory body to suspend its business either in whole or in part, for purpose of protecting the asset of its members and customers of its members or the settlement and delivery system, the provisions of Section 43, Section 45, and Section 46 of the Derivatives Act B.E. 2546 shall apply *mutatis mutandis* to the clearing house and asset received by or had in possession of the clearing house under Section 223/3.

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<sup>102</sup> Section 223/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>103</sup> Section 223/3 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>104</sup> Section 223/4 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>105</sup> Section 223/5 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 224.** When the operation of a clearing house, a securities depository centre or a securities registrar is undertaken by the Securities Exchange, no license from the SEC shall be required. In this regard, the Securities Exchange shall operate such businesses in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board under Section 223.<sup>106</sup>

The word “Securities Exchange” referred to in the first paragraph and further referred to in this Division shall include any company established by the Securities Exchange with not less than seventy-five per cent of total shares sold held by the Securities Exchange.

**Section 225.** Where securities are deposited with the Securities Exchange, the depositor shall prepare a list of securities holders, whose securities have been deposited with the Securities Exchange, in accordance with the rules and procedures as specified by the Securities Exchange. After the Securities Exchange has accepted the deposit of such securities, the Securities Exchange may accept the transfer of such deposited securities into its own name and shall hold such securities for the depositor or for any customer who is the owner of such securities.

Securities which are in the name of the Securities Exchange in accordance with the first paragraph shall be presumed to be securities held by the Securities Exchange on behalf of those persons according to type, category and amount as appear in the list of names prepared by the depositor.

On the closing date of the register of the company which issues securities, the Securities Exchange shall collect the accounts of all deposited securities and the name lists of the holders of such securities, which existed on the date prior to the first closing day, from the depositor of such securities and deliver them to the registrar of the issuing company. Such lists shall be deemed to be a part of the securities register, except for the names of those persons to whom the registrar of the issuing company has notified objection within three business days from the receipt of such lists, on the ground that the holding of securities by such persons is contrary to the law or any restriction on transferability which have been registered in accordance with the law.

**Section 226.** Upon having submitted the application to register the transfer of securities certificates into the name of the Securities Exchange to hold securities on

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<sup>106</sup> Section 224 paragraph one amended by the Securities and Exchange Act (No. 4) B.E. 2551

behalf of other persons in accordance with the first paragraph of Section 225 as well as the delivery of the securities certificates to the company which issues securities, the Securities Exchange may submit the request to the issuing company to provide a receipt in place of securities certificates. Such receipt shall have the particulars in the form specified by the Securities Exchange. In such event, it shall be deemed that securities certificates have been issued by the issuing company.

**Section 227.** Any securities owner who has deposited securities with the Securities Exchange may request the Securities Exchange to issue the securities certificates in his own name by submitting an application in accordance with the form specified by the Securities Exchange.

Upon receiving the application referred to in the first paragraph, the Securities Exchange shall notify the company which issues securities, of the name of the person who is the owner of such securities, and the issuing company so notified shall enter the name of the securities owner in the register of the company as well as issue new securities certificates, in the name of such securities owner.

In submitting the application referred to in the first paragraph, if the owner of the securities is a depositor who does not directly deposit such securities with the Securities Exchange, the owner of such securities shall apply through the depositor of such securities.

**Section 228.** The transfer of securities from the account of a securities depositor to the account of another securities depositor may be made only when the Securities Exchange has received a request from the securities depositor or when the clearing house of the Securities Exchange has notified the Securities Exchange, at the end of each trading day, of the delivery of the securities between members who have traded the securities in the Securities Exchange.

The transfer of securities referred to in the first paragraph or within the account of a securities depositor shall be deemed legally valid if undertaken in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.<sup>107</sup>

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<sup>107</sup> Section 228 paragraph two amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 228/1.**<sup>108</sup> The use of securities deposited with the Securities Exchange as collateral for a repayment of debt, which is not the case under Section 195, shall be valid and binding on the issuing company and third party when the Securities Exchange has entered a record in an account prepared in accordance with the rules, conditions and procedures as prescribed by the notification of the Securities Exchange with approval from the Capital Market Supervisory Board.

Prior to the enforcement upon securities which have been held as collateral under the first paragraph, a creditor shall notify the debtor and the person placing the collateral in writing requiring him to make such repayment within a reasonable period of time. If the debtor and the person placing the collateral fail to comply with such notice, the creditor shall have the right to sell such securities in the Securities Exchange in accordance with the procedures specified by the Securities Exchange or by auction.

The provisions concerning pledge under the Civil and Commercial Code shall apply to the extent that they are not contrary to or inconsistent with the provision of this Section.

The creditor who accepts securities as collateral for a repayment of loan under the first paragraph shall have a preferential right in such securities, in a manner similar to the pledgee.

**Section 228/2.**<sup>109</sup> The provisions of Section 225, Section 226, Section 227, Section 228 and Section 228/1 shall apply *mutatis mutandis* to the securities depository centre which obtains license from the SEC, provided that, it shall be solely for the deposit of debt securities.

**Section 229.**<sup>110</sup> When the operation of a clearing house, a securities depository centre or a securities registrar is undertaken by the Bank of Thailand, no license from the SEC shall be required. In this regard, the Board of Governors of the Bank of Thailand shall have the power to prescribe the rules, conditions and procedures for such operations.

For the purpose of operation under the first paragraph, the provisions of Section 225, Section 226, Section 227, Section 228 and Section 228/1 shall apply *mutatis mutandis*. When those provisions specify the powers and duties of the Capital Market

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<sup>108</sup> Section 228/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>109</sup> Section 228/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>110</sup> Section 229 amended by the Securities and Exchange Act (No. 4) B.E. 2551

Supervisory Board, such provisions shall be deemed to be the powers and duties of the Board of Governors of the Bank of Thailand and the Securities Exchange under those sections shall mean the Bank of Thailand.

## DIVISION 2

### Associations Related to Securities Business

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**Section 230.** Securities companies may jointly establish an association related to securities business with an objective of promoting, without seeking profit or sharing income among themselves, securities business, only by virtue of the provisions of this Act.

**Section 231.** The establishment of an association related to securities business shall require a license from, and be registered with, the Office.

**Section 232.** In applying for a license and for registration, not less than fifteen securities companies who are the founders of the association shall submit the application to the Office in accordance with the rules and procedures as prescribed by the notification of the SEC.

In considering the application for the establishment of an association related to securities business, the Office shall have the power to issue a written order summoning any person to come forward for an enquiry or requiring the delivery of any documents.

**Section 233.** The licensed and registered association related to securities business shall be a juristic person.

**Section 234.** An association related to securities business shall have its regulations and such regulations shall at least contain the following particulars:

- (1) name;
- (2) objective;
- (3) location of the office;
- (4) procedures for admission, rights and duties of members;
- (5) disciplines and punishment of members;

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(6) the operation of the association related to securities business, appointment and vacation of office as well as the meetings of directors including general meetings;

(7) other regulations as prescribed by notification of the SEC.

Regulations of an association shall be submitted for registration with the Office together with the application for a license to establish an association related to securities business. Prior to the granting of a license, if the Office deems appropriate, it may order the alteration and modification of the regulations.

**Section 235.** Only securities companies shall be members of an association related to securities business.

**Section 236.** The name of an association related to securities business shall be the name as appears in the regulations only, and the name shall not use the phrase “of Thailand” or any other phrases with similar meaning constituting the name of the association related to securities business.

The association related to securities business shall have a clearly stated name plate placed in front of its office.

**Section 237.** Relevant provisions in the law relating to trade associations concerning the operation, control, dissolution and the related penalty provisions shall apply *mutatis mutandis* to the extent that they are not contrary to or inconsistent with the provisions of this Division. In this regard, the word “SEC” shall be substituted for the word “Minister”, the word “Office” for the word “registrar”, the words “association related to securities business” for the words “trade association” and the powers and duties of a competent officer in accordance with the law relating to trade associations shall be the powers and duties of a competent officer under this Act.

## CHAPTER 8

### UNFAIR SECURITIES TRADING PRACTICES AND THE ACQUISITION OF SECURITIES FOR BUSINESS TAKE-OVERS

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#### DIVISION 1

##### Prevention of Unfair Securities Trading Practices

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**Section 238.** No securities company or any person responsible for the operation of a securities company or company which issues securities or any person having an interest in the securities shall impart any false statement or any other statement with the intention to mislead any person concerning the facts relating to the financial condition, the business standing or the trading prices of securities of a company or juristic person whose securities are listed in the Securities Exchange or are traded in a securities trading centre.

**Section 239.** No securities company or any person responsible for the operation of a securities company or company which issues securities or any person having an interest in any securities shall disseminate news concerning any information which may cause any other person to understand that the prices of any securities will increase or decrease, except where the dissemination of information has already been reported to the Securities Exchange.

**Section 240.** No person shall disseminate any false news to be rumored which may cause any other person to understand that the price of any securities will increase or decrease.

**Section 241.** In the purchase or sale of securities which are listed in the Securities Exchange or traded in a securities trading centre, no person, whether directly or indirectly, shall purchase or sell, offer to purchase or sell or invite any other person to purchase, sell or offer to purchase or sell securities which are listed in the Securities Exchange or traded in a securities trading centre in such a way as to take advantage of other persons by using information essential to changes in the prices of securities which has not yet been disclosed to the public and to which information he has access by virtue of his office or position, and whether or not such act is done for his own or another person's benefit, or to disclose such information so that he will receive consideration from the person who engages in the aforesaid acts.

For the purpose of this Section, the person under the first paragraph shall include:

(1) director, manager, person responsible for the operation or auditor of a company whose securities are listed in the Securities Exchange or traded in a securities trading centre;

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(2) securities holder of a company whose securities are listed in the Securities Exchange or traded in a securities trading centre, who holds securities the par value of which exceeds five per cent of the registered capital. For the purpose of calculating the value of such securities held by such person, the securities held by his spouse and minor children shall be counted as his securities;

(3) state agency personnel, or director, manager, or officer of the Securities Exchange or of a securities trading centre who is in an office or position with access to information which is essential to changes in the price of securities;

(4) any person involved in securities and/or the trading of securities in the Securities Exchange or in a securities trading centre;

**Section 242.** In order that the person referred to in the second paragraph of Section 241 shall not receive any benefit from the contravention of the first paragraph of Section 241, the Office shall have the right to call on such person to deliver the benefit which he has gained from such trading of securities or from the disclosure of information within a six month period from the date on which he gained access to such information. In this regard, such person shall deliver the benefit as claimed by the Office within the time specified by the Office.

The benefit claimable under the first paragraph shall be vested in the Office.

**Section 243.** In the purchase or sale of securities which are listed in the Securities Exchange or traded in a securities trading centre:

(1) no person by colluding or agreeing with any other person shall purchase or sell securities in concealment in order to mislead the general public to believe that such securities are purchased or sold in great volume or the price of such securities has changed or has not changed at any time or during any period of time which is not consistent with the normal market conditions;

(2) no person, either by himself or jointly with any other person, shall continuously trade securities which results in the purchase or sale of such securities which is not consistent with the normal market conditions and such trading is made to lure the general public to purchase or sell such securities unless such trading is made in good faith to protect his rightful benefit.

**Section 244.** The following cases shall also be deemed to be the concealment to mislead the general public in accordance with Section 243(1):

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(1) the purchase or sale of securities where the persons who finally receives benefit from such purchase or sale is the same person;

(2) the order to purchase securities of the same category, type, and of the same juristic person, or mutual fund project, with the knowledge that he himself or jointly with any other person has ordered the sale or is going to order the sale, provided that the order shall be in proximate amount, price and time;

(3) the order to sell securities of the same category, type, and of the same juristic person or mutual fund project, with the knowledge that he himself or jointly with any other person has ordered the purchase or is going to order the purchase, provided that the order shall be in proximate amount, price and time.

## DIVISION 2

### Acquisition of Securities for Business Take-Over

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**Section 245.** In this Division:

“securities” means shares, or warrants to purchase shares or other securities which may be converted into shares.

“business”<sup>111</sup> means a company whose securities are listed in the Securities Exchange or traded in a securities trading centre, or a public limited company having characteristics as prescribed by the notification of the Capital Market Supervisory Board.

**Section 246.**<sup>112</sup> Where any person, by his own act or acting in concert with others, acquires or disposes of the securities of any business and thereby increases or decreases the number of securities held by him or other persons in such business to a number which aggregately reaches any multiple of five per cent of the total number of voting rights of such business, whether or not the transfer has been registered and regardless of the amount of such increase or decrease, such person shall report to the Office each time such an acquisition or disposition has been made, provided that calculation of voting right and report shall be in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

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<sup>111</sup> Definition of “business” in Section 245 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>112</sup> Section 246 amended by the Securities and Exchange Act (No. 4) B.E. 2551

Holding of securities under the first paragraph shall include having right to purchase or to be delivered securities issued by the business resulted from holding of securities issued by other businesses or from engaging in an agreement with any other persons as prescribed by the notification of the Capital Market Supervisory Board.

**Section 247.**<sup>113</sup> Any person offers to purchase, by his own act or acting in concert with others, or does any other acts which result or will result in such person or others acquiring or holding securities in a business up to twenty-five per cent or more of the total number of voting rights of such business, shall be deemed to be an acquisition of securities for the purpose of taking over a business, except for acquisition by inheritance. In this regard, the Capital Market Supervisory Board shall have power to prescribe the rules, conditions and procedures for taking over a business and may require such person to make a tender offer for the purchase of securities.

When the Capital Market Supervisory Board requires that there shall be a tender offer for the purchase of securities under the first paragraph, such tender offer shall be filed with the Office and shall become effective after the lapse of time as prescribed by the notification of the Capital Market Supervisory Board.

**Section 248.** The person making a tender offer to purchase securities shall announce or notify the offer to purchase securities in accordance with the rules and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 249.** Upon the filing of the tender offer to purchase securities with the Office, the person making the tender offer shall immediately deliver a copy of the tender offer to the business from which he offers to purchase securities.

**Section 250.**<sup>114</sup> Upon receipt of a tender offer to purchase securities in accordance with Section 249, such business shall prepare an opinion concerning the tender offer in the form specified by the SEC and shall submit such opinion to the Office and shall deliver a copy of such opinion to each shareholder in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

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<sup>113</sup> Section 247 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>114</sup> Section 250 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 250/1.**<sup>115</sup> The business may act or omit to act in such a way as to affect tender offer for purchase of securities only with the approval of the shareholder meeting of the business in accordance with the rules, conditions and procedures as prescribed by the notification of the Capital Market Supervisory Board.

Any act or omission to act in violation of this provision shall not bind the business and the directors of the business shall be liable to damage of the third person who acts in good faith and pays consideration.

**Section 251.** No person making a tender offer to purchase securities shall purchase the securities of the business prior to the effectiveness of the tender offer which has been filed with the Office and prior to having complied with Section 248.

From the effective date of the tender offer until the date after the time specified in the tender offer for the purchase of securities, no person making the tender offer shall purchase such securities by any means other than those specified in the tender offer.

**Section 252.** After the expiry of the period specified in the tender offer to purchase securities, if the amount of securities being offered for sale by the securities holders is in excess of the amount of securities specified in the tender offer, the person making the tender offer shall purchase all of such securities, only in the following cases:

- (1) such securities are listed securities or traded in a securities trading centre and the person making the tender offer has the intention to withdraw such securities from being listed securities in the Securities Exchange or being traded in the securities trading centre;
- (2) the person making the tender offer has the intention to change the main objective of the business;
- (3) the person making the tender offer has the intention to become the holder of securities of that business in an amount of not less than seventy-five per cent of the total securities sold;
- (4) other cases as prescribed by the notification of the Capital Market Supervisory Board.

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<sup>115</sup> Section 250/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

The person making the tender offer shall make payment for securities to the seller of securities immediately upon delivery of securities, and in case such securities are listed securities, it shall be deemed to be a purchase and sale in the Securities Exchange.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 253.** When the amount of securities being offered for sale by securities holders at a certain price specified by the person making the tender offer is less than the amount specified in the tender offer and the person making such tender offer wishes to purchase up to the required amount, the person making such tender offer may offer a higher price for the purchase of securities. In such case, the person making the tender offer shall make an additional payment for the difference in price to the holders of securities who have previously made the offer for sale.

**Section 254.** When the person making the tender offer to purchase securities for the purpose of taking over a business intends to withdraw such securities from being listed securities or from being traded in a securities trading centre, the person making such tender offer shall clearly state his intention in the tender offer.

**Section 255.** Regardless of whether the take over of a business has succeeded or not, a person who has previously made a tender offer to purchase securities for the purpose of taking over such business shall be able to make another tender offer for the purpose of taking over the business only after a period of one year from the time specified in the previous tender offer for the purchase of securities, unless otherwise permitted by the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

**Section 256.** The person making the tender offer who has already purchased the securities shall report the result of such purchase to the Office within the time specified by the Capital Market Supervisory Board.

The report under the first paragraph shall be in accordance with the rules and procedures as prescribed by the notification of the Capital Market Supervisory Board.

[“Capital Market Supervisory Board” is amended by Section 56 of the Securities and Exchange Act (No.4) B.E. 2551]

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**Section 257.** The Office shall keep the information concerning a tender offer to purchase securities and make it available for inspection by the public for a period of one year from the effective date of the tender offer.

**Section 258.**<sup>116</sup> Securities of a business held by the following persons or partnerships shall be regarded as securities held by the person referred to in Section 246 and Section 247:

(1) the spouse and a minor child of the person referred to in Section 246 and Section 247;

(2) a natural person who is a shareholder of the person referred to in Section 246 and Section 247 in an amount exceeding thirty per cent of the total number of voting rights of such person, providing that the voting right of such shareholder's spouse and minor child shall be included;

(3) a juristic person which is a shareholder of the person referred to in Section 246 and Section 247 in an amount exceeding thirty per cent of the total number of voting rights of such person;

(4) a shareholder in the juristic person under (3) and the shareholders in all levels of upward shareholding, beginning from the shareholder in the juristic person under (3), providing that shareholding in each level exceeds thirty per cent of the total number of voting rights of the juristic person in the immediate lower level. In cases where the shareholder in any level is a natural person, the voting right of such shareholder's spouse and minor child shall be included;

(5) a juristic person in which the persons referred to in Section 246 and Section 247 or the persons under (1), (2) or (3) collectively hold shares in an amount exceeding thirty per cent of the total number of voting rights of such juristic person;

(6) a juristic person in which the juristic person under (5) holds its shares and its shareholders in all levels of downward shareholding, beginning from the shareholder in the juristic person under (5), providing that shareholding in each level exceeds thirty per cent of the total number of voting rights of the juristic person in the immediate lower level;

(7) an ordinary partnership in which the person referred to in Section 246 and Section 247 or the person under (1), (2), (3), (4), (5) or (6) or the limited partnership under (8) is a partner;

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<sup>116</sup>

Section 258 amended by the Securities and Exchange Act (No. 4) B.E. 2551

(8) a limited partnership in which the person referred to in Section 246 and Section 247 or the person under (1), (2), (3), (4), (5) or (6) or the ordinary partnership under (7) is an unlimited liability partner; and

(9) a juristic person over which the persons under Section 246 and Section 247 have the power of management in respect of investment in securities.

**Section 259.** In cases where there is any doubt whether the holding of securities is of the characteristics which may be counted as held by the same person in accordance with Section 258, the Office shall inform such person to give an explanation or proceed to rectify such holding of securities. If such person fails to give an explanation or fails to rectify the situation within the time specified by the Office, the holding of such securities shall be deemed to fall within the characteristics specified in Section 258.

## CHAPTER 9 APPELLATE COMMITTEE<sup>117</sup>

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Section 260.<sup>118</sup> (Repealed)

Section 261.<sup>119</sup> (Repealed)

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<sup>117</sup> Chapter 9 Appellate Committee, Section 260 through 261 repealed by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>118</sup> Section 260 repealed by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>119</sup> Section 261 repealed by the Securities and Exchange Act (No. 4) B.E. 2551



**CHAPTER 10**  
**SUPERVISION AND CONTROL**

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**Section 262.** The Minister shall have the powers and duties of overall supervision and control for implementation in accordance with the provisions of this Act and for harmonization with the policies of the Government or the resolutions of the Cabinet.

**Section 262/1.**<sup>120</sup> The Minister shall have the power to order the SEC, the Capital Market Supervisory Board or the Office to clarify any fact, give an opinion or prepare and submit report on the condition of the capital market or futures market or the guideline for the supervision of the capital market or futures market.

**Section 263.** All matters which are required to be submitted to the Cabinet in accordance with the provisions of this Act shall be submitted by the Minister.

**CHAPTER 11**  
**COMPETENT OFFICER**

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**Section 264.** In the execution of his duties, a competent officer shall have the power to:

(1) enter into the place of business or premises of a securities company, mutual fund trustee, custodian, the Securities Exchange, securities trading centre, clearing house, securities depository centre, securities registrar or the place where the data of such securities company or institution is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, in order to examine the operations, assets and liabilities of such securities company or institution, including documents, evidence or information concerning such securities company or institution;

(2) enter into the place of business of a promoter of a public limited company, a company which issues securities or an owner of securities who offers for sale securities to the public or any person, or the place where the data of such person is

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<sup>120</sup> Section 262/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts or other related documents and evidence

(3) enter into a commercial bank, financial institution or any place during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents or evidence which may be related to the commission of offences under the provisions of this Act;

(4) seize or attach documents, or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action;

(5) order a director, officer, employee or auditor of a securities company, mutual fund, mutual fund trustee, custodian, the Securities Exchange, securities trading centre, clearing house, securities depository centre, securities registrar and persons who collect or process the data of such securities company or institution by computers or any other equipment, to testify or to deliver copies of or present accounts, documents, seals or other evidence related to the businesses, operations, assets and liabilities of such securities company or institution;

(6) order any person who purchases or sells securities with or through a securities company or member of the Securities Exchange or securities trading centre to testify or deliver copies of or present accounts, documents and other evidence related to the purchase or sale of securities;

(7) order any person who may be of use in the execution of the duties of the competent officer to testify or deliver copies of or present accounts, documents, evidence or any objects related to or necessary for the execution of the duties of the competent officer;

(8) enter into a place of business to inspect the condition or the operations of any debtor of any securities company during the hours between sunrise and sunset or during the business hours of such place.

In the execution of the duties of the competent officer under the first paragraph, the persons concerned shall give reasonable assistance.

After having entered and inspected in accordance with (1), (2), (3) or (8), if the inspection has not been completed, the competent officer may continue the inspection into the night or beyond the business hours of such places.

The exercise of powers of the competent officer in accordance with (6), (7) and (8) shall be carried out against the person who is directly involved in the matter under inspection and shall require prior approval from the Office and in the case of (6) and (7), the

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competent officer shall specify a reasonable period for such person to comply with the order.

**Section 264/1.**<sup>121</sup> Upon request by the foreign authority with the power under respective foreign law on securities and exchange or other laws of similar nature, the Office shall have the power to provide assistance by gathering necessary information or evidence for the purpose of determining whether there has been any violations of the law on securities and exchange or other laws of similar nature of the requesting country; provided that the assistance shall be subject to the following conditions:

(1) the assistance shall not prejudice the public interest of Thailand or the preservation of national confidentiality;

(2) the matter which is the ground for such assistance must be categorized as the same type of offence under this Act;

(3) the requesting foreign authority agrees or consents to provide reciprocal assistance to the Office upon request.

For purpose of this Section, the provision of Section 264 shall apply *mutatis mutandis*.

**Section 265.** In the execution of his duties, the competent officer shall present his identification card to the persons involved.

The identification card of the competent officer shall be in the form specified in the ministerial regulations.

**Section 266.** In the execution of his duties in accordance with this Act, the competent officer shall be an official under the Criminal Code.

**Section 267.** When there is evidence that any person has committed an offence under this Act which may cause damage to the interests of the public and the Office has reasonable grounds to believe that the wrongdoer would remove or dispose of his properties, the Office with the approval of the SEC shall have the power to order seizure or attachment of such person's properties or the properties for which there is reasonable evidence to believe that they belong to such person. However, the period of seizure or attachment may not exceed one hundred and eighty days unless an action is brought in court, and such seizure or attachment order shall still be effective until court orders

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<sup>121</sup> Section 264/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

otherwise. Where circumstances render it impossible to bring the case into court within one hundred and eighty days, the court having jurisdiction may extend the period of seizure or attachment as requested by the Office, but may not extend the period beyond another one hundred and eighty days.

The Office shall have the power to authorize the competent officer to proceed with the seizure or attachment of the properties under the first paragraph.

The provisions of the Revenue Code shall apply to the seizure or attachment of the properties under the first paragraph *mutatis mutandis*.

In a case under the first paragraph, where there are reasonable grounds to suspect that such person will abscond from the Kingdom, upon the request by the Office, the Criminal Court shall have the power to prohibit such person from leaving the Kingdom, and in the case of extreme urgency, the SEC shall prohibit such person from leaving the Kingdom on a temporary basis for a period not exceeding fifteen days until the Criminal Court orders otherwise.

## CHAPTER 12 PENAL PROVISIONS

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**Section 267/1.**<sup>122</sup> Any person who contravenes the first paragraph of Section 22/1 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding five hundred thousand baht, or to both.

**Section 268.** Any person who contravenes Section 32, Section 33 or Section 34 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht, or to both.

**Section 269.** Any person who contravenes or fails to comply with the conditions issued in accordance with Section 35 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

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<sup>122</sup> Section 267/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 270.** Any debenture issuer who issues debentures the particulars of which do not comply with Section 40 or who fails to comply with the second paragraph of Section 41 or who makes terms and conditions or agreements which lack the essential particulars as specified in accordance with Section 42 or Section 43 shall be liable to a fine not exceeding two hundred thousand baht.

**Section 271.** Any debenture issuer who fails to comply with Section 44 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 272.** Any debenture holder representative who contravenes or fails to comply with the rules, conditions or procedures issued in accordance with Section 46 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 273.** Any company which contravenes or fails to comply with Section 50, Section 53, Section 191, Section 192 or Section 193 or contravenes or fails to comply with the rules or procedures issued in accordance with Section 50 or Section 191 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 274.** Any company which contravenes or fails to comply with Section 56, Section 57 or Section 58(1) or (3) shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

Any director, manager, or person with power of management of any company who fails to provide an explanation in accordance with Section 58(2) shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand baht, or to both.

**Section 275.** Any director, manager, person who holds management position, or auditor who contravenes or fails to comply with Section 59, or contravenes or fails to comply with the rules or procedures issued in accordance with Section 59 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

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**Section 276.** Any person who offers for sale or sells securities to the public or to any person without having filed the registration statement and draft prospectus with the Office in accordance with Section 65 or during the period for which the Office orders the suspension of the effectiveness of the registration statement and draft prospectus in accordance with Section 76 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht, or to both.

**Section 277.** Any person who offers for sale or sells securities to the public or to any persons prior to the effectiveness of the registration statement and draft prospectus which have been filed with the Office in accordance with Section 65 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one times the price at which all securities were offered for sale by such person but not less than three hundred thousand baht, or to both.

**Section 278.** Any person who makes a false statement or conceals essential facts which should have been stated in the registration statement or draft prospectus which have been filed in accordance with Section 65 shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht.

**Section 279.** Any person who contravenes or fails to comply with the second paragraph of Section 64, the second paragraph of Section 66, the first paragraph of Section 81, or contravenes or fails to comply with the rules or procedures issued in accordance with the second paragraph of Section 81 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 280.** Any person who contravenes or fails to comply with Section 77, Section 79 or Section 80 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both.

**Section 281.** Any person who contravenes or fails to comply with Section 88 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

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**Section 281/1.**<sup>123</sup> Any securities company or company which contravenes or fails to comply with Section 89/2 shall be liable to a fine not exceeding five hundred thousand baht.

When any securities company or any company commits an offence under this section, the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

**Section 281/2.**<sup>124</sup> Any director or executive of the company, who fails to perform his duties with responsibility, due care and honesty in accordance with section 89/7, which causes damage to a company or causes himself or another person to obtain any benefit from the contravention or failure to comply with such duties, shall be liable to a fine not exceeding the damages or the benefit obtained but not less than five hundred thousand baht.

When the person who commits an offence under the first paragraph with dishonest intent, he shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding two times the damages incurred or the benefit obtained but not less than one million baht, or to both.

**Section 281/3.**<sup>125</sup> Any director or executive of the company who fails to comply with Section 89/14 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 281/4.**<sup>126</sup> Any board of directors of the company which fails to comply with the first paragraph of Section 89/15 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

Any Chairperson of the company who fails to comply with the second paragraph of Section 89/15 shall be liable to a fine not exceeding one hundred thousand

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<sup>123</sup> Section 281/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>124</sup> Section 281/2 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>125</sup> Section 281/3 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>126</sup> Section 281/4 added by the Securities and Exchange Act (No. 4) B.E. 2551

baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 281/5.**<sup>127</sup> Any company secretary who fails to comply with the duty under Section 89/15 (1) (2) or (3) or Section 89/16 shall be liable to a fine not exceeding one hundred thousand baht.

**Section 281/6.**<sup>128</sup> Any company which fails to comply with Section 89/17 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 281/7.**<sup>129</sup> Any company secretary who contravenes or fails to comply with Section 89/23 which causes damage to the company or causes him or another person to obtain benefit from such contravention or failure to perform such duty shall be liable to a fine not exceeding the damages incurred or the benefit obtained but not less than one hundred thousand baht.

When a person who commits an offence under the first paragraph committed with dishonest intent shall be liable to imprisonment for a term not exceeding one year and a fine not exceeding two times the damages incurred or the benefit obtained but not less than five hundred thousand baht, or to both.

**Section 281/8.**<sup>130</sup> Any auditor or audit committee of any securities company or company who contravenes or fails to comply with Section 89/25 shall be liable to a fine not exceeding one hundred thousand baht.

**Section 281/9.**<sup>131</sup> Any person who fails to comply with Section 89/31 shall be liable to a fine not exceeding three hundred thousand baht.

**Section 281/10.**<sup>132</sup> Any person having the duty to disclose documents to shareholders or general public as specified in the provisions of the Chapter 3/1 Governance

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<sup>127</sup> Section 281/5 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>128</sup> Section 281/6 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>129</sup> Section 281/7 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>130</sup> Section 281/8 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>131</sup> Section 281/9 added by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>132</sup> Section 281/10 added by the Securities and Exchange Act (No. 4) B.E. 2551



of Publicly Traded Company, who makes a false statement or conceals essential facts which should have been stated, shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both.

**Section 282.**<sup>133</sup> Any securities company which violates or fails to comply with Section 92, Section 94, Section 96, Section 97, Section 98, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 108, Section 109, Section 110, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 122, Section 123, Section 124, Section 125, Section 126, Section 129, Section 130, the first paragraph of Section 134, Section 135, Section 136, Section 139 (1), (2), (3) or (4), the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195 or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 92, Section 98(7) or (10), the second paragraph of Section 100, Section 117, Section 135, Section 139(4), the second paragraph of Section 140, Section 141, Section 142, Section 143, Section 144, or Section 150 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

**Section 283.**<sup>134</sup> When any securities company commits an offence under Section 92, Section 96, Section 102, Section 105, Section 106, Section 108, Section 109, Section 110, Section 113, Section 114, Section 115, Section 116, Section 117, Section 123, Section 129, Section 130, Section 135, the first paragraph, second paragraph or third paragraph of Section 140, Section 151 or the first paragraph of Section 195, or violates or fails to comply with the rules, conditions or procedures or orders issued in accordance with Section 92, Section 117, Section 135 or Section 150, the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding two hundred thousand baht, or to both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

When any securities company commits an offence under Section 97, Section 98, Section 112, Section 122, Section 124, Section 125, Section 126, the first paragraph of Section 134, Section 136, or Section 139 (1), (2), (3) or (4), or violates or fails to comply with

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<sup>133</sup> Section 282 amended by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>134</sup> Section 283 amended by the Securities and Exchange Act (No. 4) B.E. 2551

the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 98(7) or (10), Section 139 (4), Section 141, Section 142, Section 143 or Section 144, the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

**Section 284.** Any mutual fund supervisor who neglects or fails to perform his duty in accordance with Section 127 or the first paragraph of Section 128 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 285.** Any auditor who contravenes or fails to comply with Section 130 or Section 131 shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues, or to both.

**Section 285 bis.**<sup>135</sup> Any securities company which violates or fails to comply with the second paragraph of Section 133 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

If the commission of offence under the first paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable for a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation or failure continues.

In case of commission by a securities company of an offence under the second paragraph of Section 133, the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both, unless it can be proven that such person has no involvement with the commission of such offence.<sup>136</sup>

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<sup>135</sup> Section 285 bis added by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>136</sup> Section 285 bis paragraph three amended by the Securities and Exchange Act (No. 4)

B.E. 2551

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If the commission of offence under the third paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both.

**Section 285 ter.**<sup>137</sup> Any private fund manager who fails to comply with the rules, conditions and procedures as announced and prescribed under the third paragraph of Section 134 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both.

If the commission of offence under the first paragraph is also a violation of the second paragraph of Section 134, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both.

**Section 286.** Any custodian who contravenes or fails to comply with Section 137 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 286 bis.**<sup>138</sup> Any securities company which violates or fails to comply with Section 138 or Section 139 (5) shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

In case of commission of offence by any securities company under Section 138 or Section 139 (5), the director, manager or any person responsible for the operation of such securities company shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.<sup>139</sup>

**Section 287.**<sup>140</sup> Any auditor of a company which issues securities in accordance with Section 32, Section 33 or Section 34, a securities company, a mutual fund, a private fund, or a company whose securities are listed in the Securities Exchange or traded

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<sup>137</sup> Section 285 ter added by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>138</sup> Section 286 bis added by the Securities and Exchange Act (No. 2) B.E. 2542

<sup>139</sup> Section 286 bis paragraph two amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>140</sup> Section 287 amended by the Securities and Exchange Act (No. 2) B.E. 2542

in a securities trading centre, who performs audit work in order to give his opinion on financial statements which does not comply with the provisions of the law relating to auditors or additional requirements as prescribed by the notification of the SEC, or makes false reports or violates the first paragraph of Section 62 or Section 107 or the fourth paragraph or fifth paragraph of Section 140 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both.

**Section 288.** Any person who contravenes or fails to comply with Section 93, Section 95 or Section 156 shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand baht to three hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 289.** Any person who undertakes securities business without having obtained a license from the Minister in accordance with Section 90 or contravenes Section 155, Section 209, Section 219, Section 220 or Section 221 shall be liable to imprisonment for a term of two to five years and a fine from two hundred thousand baht to five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 290.**<sup>141</sup> Any securities trading centre which contravenes or fails to comply with the second paragraph of Section 171, Section 188, or Section 213, or contravenes or fails to comply with the rules, conditions or procedures or orders issued under Section 186(1) or Section 206 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 291.** Any person who contravenes or fails to comply with orders issued in accordance with Section 186(2) shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both.

**Section 292.** Any person who operates a business of a clearing house, a securities depository centre or a securities registrar who fails to operate in accordance with the rules, conditions or procedures issued in accordance with Section 223 shall be liable to

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<sup>141</sup>

Section 290 amended by the Securities and Exchange Act (No. 4) B.E. 2551

imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues, or to both.

**Section 293.** Any association related to securities business which contravenes or fails to comply with Section 236 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**Section 294.** Any securities companies which agree to promote securities business without seeking profit or sharing income among themselves, by not establishing as an association related to securities business in accordance with this Act shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 295.** Any person who fails to comply with the order of the Office in accordance with the second paragraph of Section 232 shall be liable to a fine not exceeding one hundred thousand baht.

**Section 296.** Any person who contravenes Section 238, Section 239, Section 240, Section 241 or Section 243 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the benefit received or which should have been received by such person as a result of such contravention but such fine shall be not less than five hundred thousand baht, or to both.

**Section 297.** Any person who analyses the financial condition, business standing or trading prices of securities of a company or a juristic person who issues securities or whose securities are listed in the Securities Exchange or traded in a securities trading centre by distorting the facts concerning the information used in the analysis or by using information, with the knowledge that it is false, in the analysis, and the results of the analysis may cause damage to the company, the juristic person or any person, or may affect the trading prices of securities of such company or juristic person, shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or to both.

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**Section 298.** Any person who contravenes or fails to comply with Section 246, Section 247, Section 248, Section 249, Section 251, Section 252, Section 253, Section 254, Section 255 or Section 256 or contravenes or fails to comply with the conditions issued in accordance with Section 247 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues, or to both.

**Section 299.**<sup>142</sup> Any person who contravenes or fails to comply with Section 250 or Section 250/1 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

**Section 300.**<sup>143</sup> When a person who commits an offence under Section 268, Section 269, Section 270, Section 271, Section 272, Section 273, Section 274, Section 279, Section 280, Section 281, Section 281/6, Section 281/9, Section 281/10, Section 284, Section 286, Section 290, Section 292, Section 296, Section 297, Section 298 or Section 299 is a juristic person, the director, manager or any person responsible for the operation of such juristic person shall also be liable to the penalties as provided for such offences, unless it can be proven that such person has no involvement with the commission of offence by such juristic person.

**Section 301.**<sup>144</sup> When a person who commits an offence under Section 278, Section 288 or Section 289 is a juristic person, the director, manager or any person responsible for the operation of such juristic person shall also be liable to the penalties as provided for such offences, unless it can be proven that such person has no involvement with the commission of offence by such juristic person.

**Section 302.** Any person who gives false testimony to the competent officer, which may cause damage to other persons or to the public shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding sixty thousand baht.

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<sup>142</sup> Section 299 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>143</sup> Section 300 amended by the Securities and Exchange Act (No. 4) B.E. 2551

<sup>144</sup> Section 301 amended by the Securities and Exchange Act (No. 4) B.E. 2551

**Section 303.** Any person who obstructs or fails to comply with the orders of or fails to give assistance to, the competent officer who executes his duty in accordance with Section 264 or contravenes the third paragraph of Section 145 shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding sixty thousand baht.

**Section 304.** Any person who removes, damages, destroys or renders useless any seal or mark which the competent officer has stamped or affixed on any object in the execution of his duty in accordance with Section 264 as evidence for the seizure, or attachment or the keeping of such object shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding three hundred thousand baht.

**Section 305.** Any person who damages, destroys, conceals, takes away, or causes to lose or renders useless any property or document which the competent officer has seized, attached, kept, or ordered to be delivered as evidence in accordance with Section 264, and regardless of whether or not the competent officer would keep such property or document himself or would order such person or other persons to deliver or to keep it, shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand baht to three hundred thousand baht.

**Section 306.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who dishonestly deceives the public by the assertion of a falsehood or the concealment of facts which should be revealed to the public, and by such deception, obtains property from the public or from a third person so deceived, or leads the public or third person so deceived to execute, revoke, or destroy a document of right, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

**Section 307.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who is entrusted to manage the property of such juristic person, or property of which such juristic person is a co-owner, who dishonestly violates his duties by any means and causes damage to the usefulness in the nature as being a property of such juristic person, shall be liable to imprisonment for a term of five to ten years and a fine from five hundred thousand baht to one million baht.

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**Section 308.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who possesses property belonging to such juristic person, or of which such juristic person is a co-owner, and dishonestly converts such property to himself or a third party, shall be liable to imprisonment for a term of five to ten years and a fine from five hundred thousand baht to one million baht.

**Section 309.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who takes away, damages, destroys, causes depreciation in value or renders useless any property which the juristic person has the duty to look after or which is in the possession of such juristic person, if it is committed in order to cause damage to other persons or the public, shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding five hundred thousand baht.

**Section 310.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who knows that a creditor of such juristic person, or that a creditor of another person who is entitled to exercise his right as a creditor against such juristic person to enforce the payment of debt from such juristic person, uses or may use his right through the court to enforce payment:

(1) removes, conceals or transfers to another person the property of such juristic person; or  
(2) maliciously creates a false debt for such juristic person;  
if such action is done in order to prevent his creditor from receiving full or part payment, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

**Section 311.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who acts or omits to act in order to obtain unlawful gains for himself or another person and causes damage to such juristic person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

**Section 312.** Any director, manager, or person responsible for the operation of any juristic person under this Act, who commits or permits another to act so as to:

(1) damage, destroy, alter, abridge, or falsify accounts or documents or collateral of such juristic person or related to such juristic person;

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(2) make false entries or fail to enter any essential statement in the accounts or documents of such juristic person or related to such juristic person; or

(3) keep incomplete, incorrect, out-of-date, or inaccurate accounts;

If such action is done or permitted to be done to deceitfully deprive the juristic person or its shareholders of their rightful benefit or to deceive any person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

**Section 313.** Any director, manager, or person responsible for the operation of a company or a juristic person whose securities are listed in the Securities Exchange or traded in any securities trading centre, and who contravenes Section 307, Section 308, Section 309, or Section 311, shall be liable to imprisonment for a term of five to ten years and a fine of two times the price of the property or benefit which the person obtains through the contravention of such Sections, as the case may be, but such fine shall be not less than five hundred thousand baht.

**Section 314.** Any person who causes a director, manager, or any person responsible for the operation of any juristic person under this Act, or an auditor to commit an offence as provided in Section 287, Section 306, Section 307, Section 308, Section 309, Section 310, Section 311, or Section 312, whether by instruction, order, threat, employment or by any other means, shall be liable to the penalties as provided in such Sections.

**Section 315.** Any person who does any act to assist or facilitate a director, manager, or any person responsible for the operation of any juristic person under this Act, or an auditor to commit an offence as provided in Section 287, Section 306, Section 307, Section 308, Section 309, Section 310, Section 311, or Section 312 whether before or at the time of the commission of the offence, shall be liable to the penalties as provided in such Sections, unless the person is not aware of such assistance or facilitation.

**Section 315/1.**<sup>145</sup> When the court passes a judgment to punish any person in accordance with Section 241 or Section 243, the public prosecutor shall have the power to file a motion with the court for the payment of bounty to the informer or the

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<sup>145</sup> Section 315/1 added by the Securities and Exchange Act (No. 4) B.E. 2551

person giving the information regarding the commission of offences and gratuity to the arrestor from the fine paid to the court by the wrongdoer in the amount not exceeding thirty per cent of such fine, provided that such payment shall be made only when the judgment of the court becomes final.

In case of settlement of penalty for the offence under Section 241 or Section 243, the Office shall have the power to request the Settlement Committee to pay the bounty to the person giving the information regarding the commission of offences from the fine paid by the alleged offender as ordered by the Settlement Committee in the amount not exceeding thirty per cent of such fine.

The Capital Market Supervisory Board shall have the power to prescribe the rules, conditions and procedures for the purpose of this Section.

The following persons shall not be entitled to obtain the bounty and gratuity under this Section:

- (1) the commission members of the SEC, the board members of the Capital Market Supervisory Board, the Secretary-General and the officers of the Office;
- (2) the directors, the manager and the officers of the Securities Exchange or securities trading centre.

**Section 316.** Any person, in the performance of his duty under the powers and duties provided in accordance with this Act, having acquired confidential information of any person which, under normal circumstances, should not be disclosed, who discloses such information to another person, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht, or to both.

The provisions of the first paragraph shall not apply to disclosure in the following cases:

- (1) disclosure in the performance of his duty;
- (2) disclosure for the purpose of investigation or trial;
- (3) disclosure relating to the commission of offences under this Act;
- (4) disclosure for the purpose of rectifying the condition or operation of a securities company;
- (5) disclosure to an auditor of any juristic person under this Act;
- (6) disclosure to the authorities or domestic and international agencies which are responsible for the supervision of securities, the Securities Exchange or the supervision and examination of financial institutions;
- (7) disclosure upon written consent of such person.

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**Section 317.** A Settlement Committee appointed by the Minister shall have the power to settle offences under Section 268, Section 269, Section 270, Section 271, Section 272, Section 273, Section 274, Section 275, Section 276, Section 277, Section 279, Section 280, Section 281, Section 281/1, the first paragraph of Section 281/2, Section 281/3, Section 281/4, Section 281/5, Section 281/6, the first paragraph of Section 281/7, Section 281/8, Section 281/9, Section 281/10, Section 282, Section 283, Section 284, Section 285, Section 285 bis, Section 285 ter, Section 286, Section 286 bis, Section 287, Section 290, Section 291, Section 292, Section 293, Section 294, Section 295, Section 296, Section 297, Section 298, Section 299, and Section 300.<sup>146</sup>

The Settlement Committee appointed by the Minister under the first paragraph shall comprise three persons, one of whom shall be an inquiry official under the Criminal Procedure Code.

Where a case has been settled by the Settlement Committee and the alleged offender has paid the fine as determined by the Settlement Committee within the period of time specified by the Settlement Committee, such case shall be regarded as settled.

## CHAPTER 13 TRANSITIONAL PROVISIONS

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**Section 318.** At initial period of four years from the date of the publication of this Act in the Government Gazette, the provisions of Section 21(4) shall not apply to holding and vacation of office of the Secretary-General.

**Section 319.** The Ministry of Finance shall arrange for a transfer of the following funds to the Office within thirty days from the date of the publication of this Act in the Government Gazette, to be the initial capital of the Office in accordance with Section 25:

(1) the remaining amount from the Fund for Solving Securities Business Problems in the amount of five hundred and five million six hundred forty-two thousand six hundred forty-four baht and sixty satang, with interest;

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<sup>146</sup> Section 317 paragraph one amended by the Securities and Exchange Act (No. 4) B.E. 2551

(2) the remaining amount from the Capital Market Development Fund in the amount of two hundred million baht.

**Section 320.** The Bank of Thailand shall transfer money in the amount of five hundred million baht to the Office within thirty days from the date of the publication of this Act in the Government Gazette, to be the initial capital of the Office in accordance with Section 25.

**Section 321.** A securities company or securities and finance company, which has been granted a license to undertake any type of securities business under the law relating to the undertaking of finance business, securities business and credit foncier business on the date this Act comes into force, shall be deemed to be a company which has been granted a license to undertake securities business of such type under this Act.

The provisions of Section 94 shall not apply to the securities and finance company under the first paragraph.

**Section 322.** A securities company or securities and finance company as referred to in Section 321 which has paid-up registered capital of less than one hundred million baht shall proceed to:

(1) raise its paid-up registered capital to not less than fifty million baht within one year from the date of this Act coming into force;

(2) raise its paid-up registered capital to not less than one hundred million baht within two years from the date of this Act coming into force.

**Section 323.** A person acting on behalf of a company established to undertake securities business in accordance with foreign laws, and having a representative office in the Kingdom which has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business on the date of this Act coming into force, shall be deemed to be a person acting on behalf of the securities company established in accordance with foreign laws which has been given an approval under Section 93 of this Act.

**Section 324.** A securities company which has been granted a license to undertake the business of investment management under the law relating to the undertaking of finance business, securities business and credit foncier business, shall continue to manage the approved investment project in accordance with such law until the

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expiration of the project. In this regard, such securities company shall comply with the rules and procedures as approved in accordance with such law. For this purpose, any matter specified to be the powers and duties of the Bank of Thailand, shall be the powers and duties of the Office.

Prior to the expiration of the investment project, if the securities company referred to in the first paragraph wishes to convert the investment project into a mutual fund in accordance with this Act, such securities company shall comply with the rules, conditions and procedures as specified by the SEC. After such compliance, the provisions relating to mutual fund management under this Act shall apply *mutatis mutandis*.

**Section 325.** In cases where a securities company referred to in Section 321 which has been granted a license to undertake the business of mutual fund management has purchased or held shares for its own account and not for the account of the mutual fund project prior to the date of this Act coming into force and which falls within the prohibition of Section 98(7) of this Act, the securities company shall have the right to continue to hold or possess such shares. However, if there is a disposition of such shares in any amount, the securities company shall have the right to continue to hold or possess only the remaining amount of such shares.

**Section 326.** A certified auditor of a securities company or a finance and securities company who has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business prior to the date of this Act coming into force shall be deemed to be an auditor of such securities company who has been given an approval under this Act.

**Section 327.** In cases where a company referred to in Section 321 which has had a director, manager, or person with power of management, or advisor who has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business on the date of this Act coming into force, such person shall be deemed to be a person who has been given an approval under this Act.

**Section 328.** All ministerial regulations, notifications of the Ministry of Finance or notifications of the Bank of Thailand concerning the undertaking of securities business which have been issued in accordance with the provisions of the law relating to the undertaking of finance business, securities business and credit foncier business which have been in force prior to the date of this Act coming into force, shall remain in force until

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ministerial regulations, notifications, rules, regulations, or orders issued under this Act come into force.

Any matter which the ministerial regulations and notifications referred to in the first paragraph specify to be the powers and duties of the Minister of Finance or the Bank of Thailand, shall continue to be the powers and duties of the Minister of Finance or the Bank of Thailand, as the case may be, until the SEC and the Secretary General have been appointed, such powers and duties shall become the powers and duties of the Minister, the SEC or the Office, as the case may be.

**Section 329.** The Securities Exchange of Thailand which has been established under the Securities Exchange of Thailand Act, B.E. 2517 shall be the Securities Exchange under this Act. The board of directors of the Securities Exchange of Thailand and the manager of the Securities Exchange of Thailand who remain in office on the date of this Act coming into force shall continue to perform their duties until there has been the appointment and election of the board of directors of the Securities Exchange and the manager of the Securities Exchange in accordance with this Act which shall not exceed one hundred and twenty days from the date of this Act coming into force.

**Section 330.** The officers and employees of the Securities Exchange, established under the Securities Exchange of Thailand Act B.E. 2517, shall be transferred to the Securities Exchange under this Act.

**Section 331.** All businesses, capital, assets, rights, indebtedness, liabilities and budget of the Securities Exchange including all the money in the Damages Fund established under the Securities Exchange of Thailand Act, B.E. 2517 shall be transferred to the Securities Exchange under this Act.

**Section 332.** The Securities Exchange shall pay to the Office an amount of fifty million baht annually for a period of five years. The payment in the first year shall be made within thirty days from the date of the publication of this Act in the Government Gazette, and the payment in the following years shall be made within thirty days from the last day of the calendar year of this Act coming into force and of each following year until the end of the five year period.

The money paid under the first paragraph shall be deemed to be money payable by the Securities Exchange in accordance with Section 182 as long as there has been a payment under the first paragraph.

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**Section 333.** Members of the Securities Exchange, established under the Securities Exchange of Thailand Act, B.E. 2517, shall be members of the Securities Exchange under this Act.

**Section 334.** Securities, which have been traded in the Securities Exchange established under the Securities Exchange of Thailand Act, B.E. 2517, shall be listed securities under this Act. When a company whose securities are listed in the Securities Exchange is a limited company under the Civil and Commercial Code on the applicable date of this Act, such company shall convert into a public limited company under the law relating to the public limited companies within two years from the date of which this Act came into force. In case of necessity, the SEC may extend such period, but may not extend such period beyond five years from the date of which this Act came into force.

**Section 335.** When any company has submitted an application for approval from the Minister of Finance to accept its securities to be registered or authorized securities through the board of directors of the Securities Exchange in accordance with Section 18 and Section 19 of the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527 and the Minister of Finance has not yet issued an order accepting such securities to be registered or authorized securities prior to the applicable date of this Act, such company shall continue to proceed with Section 18 and Section 19 of such Acts and the powers and duties of the Minister of Finance shall be the powers and duties of the SEC.

When the SEC has issued an order accepting the securities of the applying company as registered or authorized securities in accordance with the first paragraph, such securities shall be deemed to be listed securities under this Act and the company whose securities are so listed shall convert into a public limited company in accordance with Section 334 of this Act.

**Section 336.** In cases where any company has proceeded to submit an application for approval to the board of directors of the Securities Exchange to offer newly issued shares or debentures for sale to the public in accordance with Section 19 ter of the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527 and the board of directors of the Securities Exchange has not yet issued an approval to such company to offer newly issued shares and debentures for sale to the public prior to the date of this Act coming into force, the board of directors of

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the Securities Exchange shall proceed to consider such application in accordance with the rules and procedures specified by the board of directors of the Securities Exchange with the approval of the Minister of Finance under Section 19 ter of such Acts. In cases where it is necessary to alter or modify such rules and procedures in order that the consideration of the application may be accomplished, the board of directors of the Securities Exchange may specify any rules or procedures with the approval of the SEC.

**Section 337.** A company which has been given an approval to offer newly issued shares or debentures for sale to the public in accordance with Section 19 ter of the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527 prior to the date of this Act coming into force, or a company which has been given an approval to offer newly issued shares or debentures for sale to the public in accordance with Section 336 of this Act, such company shall continue to offer newly issued shares or debentures for sale to the public in accordance with the rules and procedures as specified by Section 19 ter of such Acts. Where it is necessary to alter or modify such rules and procedures in order that the offer of newly issued shares or debentures for sale to the public can be accomplished, the board of directors of the Securities Exchange may specify any rules or procedures with the approval of the SEC.

**Section 338.** All ministerial regulations and notifications of the Ministry of Finance which have been issued in accordance with the provisions of the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527, rules of the Securities Exchange of Thailand, regulations of the Securities Exchange of Thailand, procedures of the Securities Exchange of Thailand, procedures concerning shares register and notifications of the Securities Exchange of Thailand which have been in force prior to the date of this Act coming into force shall remain in force until the ministerial regulations, notifications, rules, regulations or procedures issued under this Act come into force.

Any matter specified by the ministerial regulations, notifications, rules and regulations under the first paragraph to be the powers and duties of the Minister of Finance or the board of directors of the Securities Exchange of Thailand shall continue to be the powers and duties of the Minister of Finance or the board of directors of the Securities Exchange of Thailand until the SEC or the board of directors of the Securities Exchange have been appointed in accordance with this Act, such powers and duties shall become the powers and duties of the Minister, the SEC or the board of directors of the Securities Exchange, as the case may be.

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**Section 339.** Any person providing a service of a securities registrar prior to the date of this Act coming into force may continue to provide such service, provided that an application for a license to provide such service shall be submitted within one hundred and twenty days after the date of this Act coming into force. After the application has been submitted such persons may continue to provide the service unless application for a license has been refused.

**Section 340.** All associations, which have the same characteristics or objectives as the associations related to securities business and which have been registered as trade associations under the law relating to trade associations prior to the date of this Act coming into force, wishing to become the associations related to securities business in accordance with this Act, shall submit an application for approval to be an association related to securities business within ninety days from the date of this Act coming into force. After the approval has been granted in accordance with this Act, the registrar of trade associations under the law relating to trade associations shall delete the name of such association from the trade associations register.

All assets and liabilities of associations having the same characteristics or objectives as associations related to securities business which have been given an approval and registered as associations relating to securities business in accordance with this Act shall be transferred to the associations related to securities business which have been newly established.

When any association having the same characteristics or objectives as an association related to securities business which is a trade association under the law relating to trade associations does not submit an application to become an association related to securities business in accordance with this Act within the time specified in the first paragraph, it shall be dissolved. In this regard, the registrar of the trade associations under the law relating to the trade associations shall delete the name of such association from the trade associations register.

When any trade association is not satisfied with the order of the registrar of the trade associations under the law relating to trade associations to delete the name of such association from the register, the trade association shall have the right to appeal against such order by submitting an appeal to the SEC within fifteen days from the date of the receipt of the order. The decision of the SEC shall be final.

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**Section 341.** Competent officers who have been appointed in accordance with the law relating to the undertaking of finance business, securities business and credit foncier business, and in accordance with the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527 shall be the competent officers who have been appointed under this Act until the SEC shall order otherwise.

In the execution of his duty, identification cards issued to the competent officers referred to in the first paragraph shall be the identification cards of the competent officers under this Act. After the appointment of the Secretary General has been made, the competent officer shall report the execution of his duty to the Office.

**Section 342.** The Settlement Committee under this Act shall have the power to settle penalty for the offences which can be settled under the law on undertaking of finance business, securities business and credit foncier business or under the Securities Exchange of Thailand Act, B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2), B.E. 2527.

**Section 343.** Any securities company which contravenes the provisions of Section 322 or fails to comply with the rules and conditions of the first paragraph of Section 324 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

When a securities company violates or fails to comply with the first paragraph, if it can be proven that the offence committed by such securities company is caused by the order, the act, or the failure to order or the omission from an act which is the duty of any director, manager or person responsible for the operation of such securities company, that person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or to both.

**Section 344.** The Settlement Committee referred to in Section 317 shall have the power to settle the offences under Section 343.

Countersigned by:

***Anand Panyarachun***

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Prime Minister

*Office of the Council of State*

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