

-Unofficial Translation-

Ministerial Regulation
Concerning Granting of Approval for Undertaking Securities Business

By the virtue of Section 7 and the fourth paragraph of Section 90 of the Securities and Exchange Act B.E. 2535 which contains certain provision relating to the restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the Minister of Finance prescribes the Ministerial Regulation as follows:

Clause 1 The following Ministerial Regulations shall be repealed:

(1) The Ministerial Regulation No. 2 (B.E. 2536) Promulgated under the Securities and Exchange Act B.E. 2535;

(2) The Ministerial Regulation No. 5 (B.E. 2539) Promulgated under the Securities and Exchange Act B.E. 2535;

(3) The Ministerial Regulation No. 9 (B.E. 2540) Promulgated under the Securities and Exchange Act B.E. 2535;

(4) The Ministerial Regulation No. 13 (B.E. 2541) Promulgated under the Securities and Exchange Act B.E. 2535;

(5) The Ministerial Regulation No. 15 (B.E. 2543) Promulgated under the Securities and Exchange Act B.E. 2535;

(6) The Ministerial Regulation No. 16 (B.E. 2544) Promulgated under the Securities and Exchange Act B.E. 2535;

(7) The Ministerial Regulation No. 17 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535;

(8) The Ministerial Regulation No. 18 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535;

(9) The Ministerial Regulation No. 21 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535;

This English version is prepared by staff of the Legal Department with the sole purpose of facilitating the comprehension of foreign participants in rules and regulations promulgated under the Securities and Exchange Act B.E. 2535 and shall not in any event be construed or interpreted as having effect in substitution for or supplementary to the Thai version thereof.

Please note that the translation has not been subjected to an official review by the SEC Office. The SEC Office, accordingly, cannot undertake any responsibility for its accuracy, nor be held liable for any loss or damages arising out of or in connection with its use.

(10) The Ministerial Regulation No. 23 (B.E. 2545) Promulgated under the Securities and Exchange Act B.E. 2535;

(11) The Ministerial Regulation Concerning Approval for Undertaking Securities Business in the Category of Mutual Fund Management B.E. 2545;

(12) The Ministerial Regulation Concerning Approval for Undertaking Securities Business in the Category of Investment Advisory Service B.E. 2545;

(13) The Ministerial Regulation Concerning Approval for Undertaking Securities Business in the Category of Venture Capital Management B.E. 2545;

(14) The Ministerial Regulation Concerning Approval for Undertaking Securities Business in the Category of Securities Brokerage, Securities Dealing or Securities Underwriting of Investment Units B.E. 2547;

(15) The Ministerial Regulation Concerning Approval for Undertaking Securities Business in the Category of Mutual Fund Management (No. 2) B.E. 2547;

Clause 2 In this Ministerial Regulation:

“securities business license type A (๗)” means license to undertake securities business in various categories consisting of

- (1) securities brokerage;
- (2) securities dealing;
- (3) securities underwriting;
- (4) investment advisory service;
- (5) mutual fund management;
- (6) private fund management;
- (7) securities borrowing and lending;
- (8) venture capital management.

“securities business license type B (๗)” means license to undertake securities business in various categories consisting of

- (1) securities brokerage of debt securities;
- (2) securities dealing of debt securities;
- (3) securities underwriting of debt securities;
- (4) investment advisory service;
- (5) securities borrowing and lending;

“securities business license type C (๗)” means license to undertake securities business in various categories consisting of

- (1) mutual fund management;
- (2) private fund management;

- (3) securities brokerage of investment units;
- (4) securities dealing of investment units;
- (5) securities underwriting of investment units;
- (6) investment advisory service
- (7) venture capital management.

“securities business license type D (j)” means license to undertake securities business in various categories consisting of

- (1) securities brokerage of investment units;
- (2) securities dealing of investment units;
- (3) securities underwriting of investment units.

“applicant” means person applying for securities business license under this Ministerial Regulation.

“commercial bank” means commercial bank in accordance with law on commercial banking or law on business of financial institution;

“life insurance company” means life insurance company in accordance with law on life insurance.

“company” means limited company or public limited company.

“conglomerate” means group of legal entities having relationship in respect of shareholding structure, provided that every legal entity in such group has relationship with the other as parent company or subsidiary or legal entities in such group have the same shareholder, whether directly or indirectly, by themselves or combining with others exceeding fifty percent of the total number of shares with voting right of such legal entities.

“parent company” means

(1) company holding shares of the applicant exceeding fifty percent of the total number of shares with voting right of the applicant;

(2) company holding shares of the company under (1) exceeding fifty percent of the total number of shares with voting right of such company;

(3) company holding shares of other companies in all upward levels of shareholding, beginning with the company holding shares of the company under (2) and shareholding in each level exceeds fifty percent of the total number of shares with voting right of such other companies;

(4) company holding shares of the applicant, whether directly or indirectly, by itself or combining with others exceeding fifty percent of the total number of shares with voting right of the applicant.

“subsidiary” means

- (1) company whose shares are held by parent company exceeding fifty percent of the total number of shares with voting right of such company;
- (2) company whose shares are held by the company under (1) exceeding fifty percent of the total number of shares with voting right of the company;
- (3) company whose shares are held by other companies in all downward levels of shareholding, beginning with the company whose shares are held by the company under (2) and shareholding in each level exceeds fifty percent of the total number of shares with voting right of the company in the lower level;
- (4) company whose shares are held by parent company or other companies under (1), (2) or (3) , whether directly or indirectly, by itself or combing with others exceeding fifty percent of the total number of shares with voting right of such company.

Clause 3 This Ministerial Regulation shall apply to application for license and issuance of securities business licenses as follows:

- (1) securities business license type A (ᠨ);
- (2) securities business license type B (ᠯ);
- (3) securities business license type C (ᠮ);
- (4) securities business license type D (ᠯ);
- (5) securities business license in the category of investment advisory service;
- (6) securities business license in the category of securities borrowing and lending;
- (7) securities business license in the category of venture capital management.

Chapter 1 The Applicant

Clause 4 The applicant for securities business license type A (ᠨ) shall be-

- (1) securities company which obtains securities business license in the category of securities brokerage but shall not include securities company which obtains securities business license in the category of securities brokerage of debt securities or investment units;
- (2) securities company other than the securities company under (1) but shall not include financial institution established by any other law which has obtained securities business license after having the status of financial institution;
- (3) commercial bank;

(4) other financial institutions as specified in the notification of the SEC; or
(5) newly established company for the purpose of applying for securities business license type A (n).

Clause 5 The applicant for securities business license type B (u) shall be-

(1) securities company which obtains securities business license in the category of securities dealing or securities underwriting of debt securities ;
(2) commercial bank;
(3) other financial institutions as specified in the notification of the SEC; or
(4) newly established company for the purpose of applying for securities business license type B(u).

Clause 6 The applicant for securities business license type C (e) shall be-

(1) securities company which obtains securities business license in the category of mutual fund management;
(2) securities company other than the securities company under (1) but shall not include financial institution established by any other law which has obtained securities business license after having the status of financial institution;
(3) commercial bank;
(4) life insurance company;
(5) other financial institutions as specified in the notification of the SEC; or
(6) newly established company for the purpose of applying for securities business license type C (e) which has one or more of the following shareholders hold its share in the amount not less than fifty percent of the total number of shares sold:
(a) legal entity under (2), (3), (4) or (5);
(b) company holding shares in one of the legal entity under (2), (3), (4) or (5) in the amount not less than fifty-one percent of such legal entity's total number of shares sold; or
(7) company other than the company under (6) which is newly established for the purpose of applying for securities business license type C (e).

Clause 7 The applicant for securities business license type D (j) shall be-

(1) securities company;
(2) commercial bank;
(3) life insurance company;
(4) other financial institutions as specified in the notification of the SEC; or
(5) newly established company for the purpose of applying for securities business license type D (j).

Clause 8 The applicant for securities business license in the category of investment advisory service shall be-

- (1) securities company;
- (2) commercial bank;
- (3) life insurance company;
- (4) other financial institutions as specified in the notification of the SEC; or
- (5) newly established company for the purpose of applying for securities business license in the category of investment advisory service.

Clause 9 The applicant for securities business license in the category of securities borrowing and lending shall be-

- (1) securities company which obtains securities business license in the category of securities brokerage but shall not include securities company which obtains securities business license in the category of securities brokerage of debt securities or investment units;
- (2) commercial bank;
- (3) other financial institutions as specified in the notification of the SEC; or
- (4) newly established company for the purpose of applying for securities business license in the category of securities borrowing and lending.

Clause 10 The applicant for securities business license in the category of venture capital management shall be newly established company for the purpose of applying for securities business license in the category of venture capital management.

Clause 11 The applicant for securities business license shall obtain securities business license only when it has the following qualifications:

- (1) having paid up registered capital not less than the amount specified in the notification of the SEC;
- (2) not having a reasonable ground to believe that the applicant has financial condition that is likely to cause damage or any other circumstances indicating the applicant's financial hardship. In addition, there is no reasonable ground to believe that the applicant has any deficiency or is not appropriate regarding control and sound business conduct;
- (3) being able to maintain capital funds and set aside reserve capital in compliance with law establishing such legal entity or law controlling business undertaking of such legal entity;
- (4) being able to show that person who is or will be director, manager or person with managerial authority who is responsible for the applicant's undertaking of securities business has qualifications and does not have any prohibited characteristics under Section 103 and the SEC Notification concerning qualifications and other prohibited characteristics of the securities company's executives;

(5) being able to show that person who is or will be major shareholder does not have any prohibited characteristics under the Notification of the Ministry of Finance concerning prescription of conditions for the securities company to apply for approval of major shareholder.

Chapter 2

Application of License and Issuance of Securities Business License

Clause 12 The applicant shall file an application with the SEC Office in accordance with form and procedure together with supplementary documents as specified in the notification of the SEC.

Clause 13 In applying for license, the application shall be filed in the following periods:

(1) in case of the applicant under Clause 4(1), Clause 5(1), (2) and (3), Clause 6(1), (2), (3), (4), (5) and (6), Clause 7, Clause 8, Clause 9 and Clause 10, the application shall be filed from the date on which this Ministerial Regulation comes into force onwards;

(2) in case of the applicant under Clause 4(2), (3), (4) and (5), Clause 5(4) and Clause 6(7), the application shall be filed from 1st January B.E. 2555 onwards.

Clause 14 In cases where the SEC Office considers that it is necessary and expedient, with the applicant's consent, the competent officer shall be empowered to enter into the place of business or address of such person or other relevant places for inspection of financial condition, operation, asset or information relevant to the applicant.

Clause 15 In cases where the SEC considers that the applicant is qualified in all respects under Clause 11, within sixty days from the date on which the SEC Office receives the complete application and supplementary documents, the SEC shall give recommendation to the Minister for grant of securities business license and the Minister shall complete his consideration for issuance of securities business license within thirty days from the date of receiving the SEC's recommendation.

Securities business license shall be in form specified in the notification of the SEC..

Clause 16 In issuing securities business license, the Minister shall prescribe conditions in the following cases:

(1) the licensee shall commence operation of securities business in the category specified in the license only after the SEC Office, having completed its inspection, is of the view that the licensee is able to show that it has-

(a) already provided sound and effective arrangements for management;

(b) policy and effective measures for preventing conflict of interests, learning of inside information between units and personnel, internal control and risk management for operation of securities business in the category to be commenced including measure for controlling and monitoring the compliance with the policy and measures set in place;

(c) operational system promptly for operation of securities business in the category to be commenced

(d) human resources promptly for operation of securities business in the category to be commenced;

(2) the licensee shall undertake any of securities businesses specified in the license within one hundred and eighty days from the date of obtaining the license;

(3) the licensee shall maintain the qualifications under Clause 11 and take steps in the matter shown under (1)(a), (b), (c) and (d) during the period of undertaking securities business;

(4) the licensee shall maintain status of the legal entity in conglomerate during the period of undertaking securities business and in accordance with details on the most recent shareholding structure shown to the SEC Office;

(5) the licensee to undertake securities business type C (၈) which is the legal entity under Clause 6(6) and obtained the license prior to 1st January B.E. 2555, shall maintain shareholding proportion to comply with that specified in Clause 6(6) until 31st December B.E. 2554;

(6) the licensee to undertake securities business in the category of securities borrowing and lending shall comply with the rules, conditions and procedures as specified in the notification of the SEC.

In cases where the licensee fails to comply with the conditions specified under the first paragraph, the Minister with the SEC's recommendation may revoke such license.

Clause 17 Subject to the second paragraph, the application for securities business license and securities business license shall be charged for the fee in accordance with the list of fees attached herewith.

In case of the application for securities business license type A (၇), if the applicant or the legal entity in conglomerate is the licensee to undertake derivatives under law on derivatives, the license fee paid by the licensee shall be reduced in the amount equal to the license fee for derivatives business license already paid either by the applicant or the legal entity in conglomerate, provided that such amount shall not exceed the license fee for securities business license type A (၇) which shall be paid by the licensee.

The license fee for securities business license shall be paid on the date of obtaining the license.

Chapter 3
Giving Back Securities Business License Previously Granted

Clause 18 The applicant for securities business license type A (᠒), securities business license type B (᠓) or securities business license type C (᠔) for the purpose of undertaking securities business in addition to the categories already licensed under securities business license previously obtained, shall file the application as specified in accordance with Chapter 2

In filing the application under the first paragraph, the applicant shall file the application for giving back the securities business license obtained by the applicant or the legal entity in conglomerate prior to the date of filing such application altogether in accordance with Clause 19, Clause 20 or Clause 21, as the case may be.

Clause 19 In case of applying for securities business license type A (᠒), the applicant shall take steps to give back the securities business licenses in the following categories:

(1) securities business license type B (᠓), securities business license type C (᠔), securities business license type D (᠕), securities business licenses in the categories of securities brokerage, securities dealing, securities underwriting, investment advisory service, mutual fund management, private fund management, securities borrowing and lending and venture capital management, obtained by the applicant prior to the date of filing the application;

(2) securities business licenses in the categories of mutual fund management, private fund management, securities brokerage, securities dealing and securities underwriting except for securities brokerage, securities dealing and securities underwriting of investment units, obtained by the legal entity in conglomerate prior to the date of filing the application.

Clause 20 In case of applying for securities business license type B (᠓), the applicant shall take steps to give back the securities business licenses in the following categories:

(1) securities business licenses in the categories of securities dealing and securities underwriting of debt securities, investment advisory service and securities borrowing and lending, obtained by the applicant prior to the date of filing the application;

(2) securities business licenses in the categories of securities dealing and securities underwriting of debt securities, obtained by the legal entity in conglomerate prior to the date of filing the application.

Clause 21 In case of applying for securities business license type C (क), the applicant shall take steps to give back the securities business licenses in the following categories:

(1) securities business license type D (ग), securities business licenses in the categories of mutual fund management, private fund management, investment advisory service, venture capital management and securities brokerage, securities dealing and securities underwriting in investment units, obtained by the applicant prior to the date of filing the application;

(2) securities business licenses in the categories of mutual fund management, private fund management, obtained by the legal entity in conglomerate prior to the date of filing the application.

Clause 22 In case of the licensee which has to maintain status of the legal entity in conglomerate in accordance with the condition specified under Clause 16(4) will change shareholding structure and cause failure to maintain the said status, if intending to continue undertaking securities business as licensed, such licensee shall file the application for giving back the securities business license with the SEC Office prior to the date of changing shareholding structure together with the application for securities business license in the category intending to continue undertaking as specified in accordance with Chapter 2.

Clause 23 In cases where securities business license has been issued to the applicant filing the application for giving back the securities business license in accordance with the second paragraph of Clause 18 or Clause 22, as the case may be, such issued license shall be effective on the date of cancellation of the license given back.

Transitional Provisions

Clause 24 The licensee shall be allowed to continue undertaking securities businesses in accordance with the Ministerial Regulations repealed by this Ministerial Regulation under the condition specified in such license, provided that the licensee which choose to pay the license fee by annual term shall pay the total amount of license fee in accordance with the rules and period specified in such Ministerial Regulation.

Clause 25 The application for undertaking securities business and the application for establishment of company filed with the SEC or the SEC Office in accordance with the Ministerial Regulations repealed by this Ministerial Regulation, if the correct and complete documents have been filed prior to the date on which this

Ministerial Regulation comes into force, the application for license, the application for approval, the permission, the approval and the payment of fee shall be in accordance with such Ministerial Regulation and the relevant notifications.

Clause 26 The licensee to undertake securities businesses in the categories of securities borrowing and lending and venture capital management in accordance with the Ministerial Regulations repealed by this Ministerial Regulation, shall comply with the rules, conditions and procedures specified in the notification of the SEC by virtue of this Ministerial Regulation.

Clause 27 The licensee to undertake securities business in the category of mutual fund management in accordance with the Ministerial Regulations repealed by this Ministerial Regulation, shall have the duty to maintain shareholding proportion in the manner and period specified in the said Ministerial Regulation but no later than 31st December B.E. 2554.

Clause 28 The licensee to undertake securities business in the category of venture capital management in accordance with the Ministerial Regulations repealed by this Ministerial Regulation, shall maintain the following qualifications during the period of the license:

(1) having objectives limited to operating securities business in the licensed category, and other businesses as permitted by the SEC;

(2) being able to show that its operational system will be prompt for operating securities business in the category of venture capital management; consideration on which will be taken into account its internal control system, record keeping system and system for making reports concerning venture capital management;

(3) being able to show that its human resource will be prompt and adequate with a view to responsibility for venture capital management ; consideration on which shall be based on the company executives' knowledge, competency, honesty and working experience.

Clause 29 The licensee to undertake securities business in the category of securities brokerage, securities dealing or securities underwriting in investment units in accordance with the Ministerial Regulations repealed by this Ministerial Regulation, shall maintain the following qualifications during the period of the license:

(1) being able to maintain capital funds and set aside reserve capital in accordance with law establishing such legal entity or law controlling business undertaking of such legal entity;

(2) not having financial condition that is likely to cause damage, any other circumstances that show its financial hardship, any deficiency or inappropriateness regarding control and sound business conduct;

(3) having executives appointed by board of directors of company or financial institution as the highest rank persons with managerial authority who are capable of management, ethical, honest, understand and responsible for business undertaking;

(4) having determined clear scope of authority and responsibility of executives and units;

(5) being able to show that its operational system will be prompt for operating securities business in the licensed category;

(6) being able to show that its human resource will be prompt and adequate with a view to responsibility for undertaking of securities business in the licensed category.

Clause 30 All SEC's Notifications and the SEC Office's Notifications promulgated in accordance with the Ministerial Regulations repealed by this Ministerial Regulation and remain in force prior to the date on which this Ministerial Regulation comes into force, shall remain in force, to the extent that those notifications do not contravene the provisions of this Ministerial Regulation, until the notifications governing the similar matters are promulgated under this Ministerial Regulation.

Given on 25th January B.E. 2551.

(Mr. Chalongphob Sussangkarn)

The Minister of Finance