

**(Unofficial Translation)\***  
**Securities and Exchange Act**  
**(No. 4)**  
**B.E. 2551**

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BHUMIBOL ADULYADEJ, REX.,  
Given on the day of 23<sup>rd</sup> February B.E. 2551  
Being the 63<sup>rd</sup> Year of the Present Reign.

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

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

Whereas this Act contains certain provision relating to the restriction of rights and liberties of persons which Section 29, in conjunction with Section 41, Section 43 and Section 44 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

*SECTION 1. This Act shall be called the "Securities and Exchange Act (No.4), B.E. 2551".*

*SECTION 2. This Act shall come into force after the following date of its publication in the Government Gazette, except Section 20, Section 21, Section 40, Section 41, Section 42, Section 43, Section 44 which shall come into force on the one hundred and eightieth day following the date of its publication in the Government Gazette.*

*SECTION 3. The definition "company" in Section 4 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

““company” 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 special local government organization;
- (3) unit or organization of foreign government, international organization and juristic person under law of foreign jurisdiction;

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\* This second draft of English version is prepared by staff of the Legal Department with the sole purpose of providing foreigners with information concerning the Securities and Exchange Act (No. 4) B.E. 2551 Accordingly this second draft of English version 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.

- (4) juristic person established by specific law; and
- (5) issuing entity established in any other forms as specified in the notification of the SEC.”

*SECTION 4. The provision of Section 5 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 5.** Unless otherwise specified by the provisions of this Act, the SEC, the Capital Market Supervisory Board, the Office, the board of directors of the Securities Exchange, and the Securities Exchange shall issue the notification to the public specifying the period for consideration of the issuance of a license and granting of an approval under this Act. In cases where an application for a license or for an approval is refused, the applicant shall be notified of the reasons therefor.”

*SECTION 5. The provisions of Section 8, Section 9, Section 10 and Section 11 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 8.** A Securities and Exchange Commission hereby referred to as the "SEC" shall be established, comprising the Chairman appointed by the Cabinet upon the recommendation of the Minister of Finance, the Governor of the Bank of Thailand, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Commerce and not fewer than four but not exceeding six experts appointed under nomination process 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.** The Chairman and each commission member appointed in accordance with Section 8 shall be Thai nationals and shall not have the following prohibited characteristics:

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

Where person having characteristics under (5) or (6) is appointed, the appointed person shall perform his duty only after his resignation from the position under (5) or (6), which shall be 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 Chairman or commission member, under the circumstance of which there shall be appointment of another person as the Chairman or commission member, as the case may be.

**SECTION 10.** The Chairman and each commission member 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 Chairman and commission members shall be made within sixty days. During the period when new Chairman or new commission members, as the case may be, have not yet been appointed, the retiring Chairman or commission members shall remain in office until their successors assume their duties.

**SECTION 11.** Apart from retirement upon the expiration of the term of office under Section 10, the office of the Chairman and a commission member appointed in accordance with Section 8 shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of seventy years;
- (4) having the prohibited characteristics as provided in Section 9;
- (5) termination by the Cabinet resolution upon the recommendation of the Minister in cases of the Chairman or by the Minister order upon the recommendation of the SEC passing a resolution with at least two-third of all commission members in cases of a commission member, provided that the resolution and order shall state clear reason therefor.

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

*SECTION 6. The provision of Section 13 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 13.** Any commission member 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 in accordance with the first paragraph shall be specified by the SEC.”

*SECTION 7. The following texts shall be inserted as sub-clause (4/1) in Section 14 of the Securities and Exchange Act B.E. 2535:*

“(4/1) the prescription of a guideline for consideration of any problematic issues which may arise from the enforcement of this Act.”

*SECTION 8. The following texts shall be inserted as Section 14/1 and Section 14/2 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 14/1** The Audit Committee appointed by the SEC shall consist of not fewer than three but not exceeding five committee members, among whom there shall be at least two commission members in the SEC who has been appointed by the Minister.

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

**SECTION 14/2** The Audit Committee shall have the following powers and duties:

- (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 in the compliance of rules;
- (5) supervising the internal examining unit;
- (6) performing any other duties assigned by the SEC.

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

*SECTION 9. The provision of Section 15 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 15.** 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 10. The following texts shall be inserted as Division 1/1 The Capital Market Supervisory Board – Section 16/1, Section 16/2, Section 16/3, Section 16/4, Section 16/5, Section 16/6, Section 16/7, and Section 16/8 in Chapter 1 The Securities and Exchange Commission of the Securities and Exchange Act B.E. 2535:*

**“DIVISION 1/1  
THE CAPITAL MARKET SUPERVISORY BOARD**

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**SECTION 16/1** The Capital Market Supervisory Board shall be established, comprising the Secretary-General as Chairman, a Deputy Secretary-General assigned by the Secretary-General, the Director-General or a Deputy Director-General of the Fiscal Policy Office assigned by the Director-General and not exceeding four experts appointed as commission members by the Minister under nomination process in accordance with Section 31/7; in this regard, there shall be at least two persons having 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** Each commission member appointed by the Minister shall be Thai nationals and shall not possess any prohibited characteristics in accordance with 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, over-the-counter centre, organization related to securities business, derivatives business, derivatives trading centre, derivatives clearing house, derivatives regulatory association or any other companies which are under the supervision of the SEC, the Capital Market Supervisory Board or the Office.

The appointed commission member by the Minister who has the prohibited characteristics 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 the appointed person fails to resign within the said period, it shall be deemed that such person has never been appointed as the commission member, under the circumstance of which there shall be appointment of another person as the commission member.

**SECTION 16/3** Any commission member appointed by the Minister in accordance with Section 16/1 shall hold office for a term of four years and the commission members who retire 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 commission members shall be retired by means of drawing lots. Retirement from the office by means of drawing lots shall be deemed retirement upon the expiration of the term of office.

Upon the expiration of the term of office of the commission member, the Chairman of the SEC jointly with the Secretary-General shall propose the list of experts to the Selection Committee within sixty days for operating in accordance with Section 31/7; in this regard, the retiring commission 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** Apart from the retirement upon the expiration of the term of office, the commission member under section 16/1 shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) reaching the age of seventy years;
- (4) termination by the Minister order upon the recommendation of the SEC passing a resolution with at least two-third of all commission members, provided that the resolution and order shall state clear reason therefor;
- (5) having the prohibited characteristics as provided in Section 16/2.

If the office of a commission 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 commission member. The appointed commission member shall retain office for the duration of the unexpired term of the commission member whom he replaces.

**SECTION 16/5** The commission members of the Capital Market Supervisory Board shall prepare reports to the office on his securities holding as well as the holdings of securities by his spouse and minor children in accordance with the rules and period as specified in the notification of the SEC.

**SECTION 16/6** The Capital Market Supervisory Board shall have the power and duty to perform any other acts under the provisions of this Act or other laws and shall be responsible to the SEC.

The power and duty of the Capital Market Supervisory Board under the first paragraph shall include:

- (1) the issuance of rules, regulations, notifications, orders or directions on securities business, issuance and offering of securities, Securities Exchange, securities depository centre, clearing house, securities registrar, any association related to securities business and the acquisition of securities for business take-overs;
- (2) reporting the result of the business performance sporadically to the SEC with the rules, conditions and procedures as specified by the SEC;

(3) any other activities as assigned by the SEC or any other activities to be implemented according to the objectives of this Act.

**SECTION 16/7** The Capital Market Supervisory Board shall have the power to appoint a sub-committee to perform any matter as assigned by the Capital Market Supervisory Board.

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

**SECTION 16/8** The commission members of the Capital Market Supervisory Board and the sub-committee shall receive remuneration as specified by the SEC. The remuneration shall be deemed to be expenses for the operation of the Office.”

*SECTION 11. The provision of Section 19 of the Securities and Exchange Act B.E. 2535 as amended by the Securities and Exchange Act (No.2) B.E. 2542 shall be amended and replaced by the following texts:*

**“SECTION 19.** The Office has the power and duty to:

- (1) perform any act for the implementation of the SEC’s resolutions;
- (2) supervise compliance and enforcement of law against any person violating the provisions of this Act;
- (3) determine the fees for filing registration statements, annual registration statements, registration and any other applications;
- (4) accept fees;
- (5) perform any other acts as specified by the provision of this Act or any other laws.”

*SECTION 12. The provision of Section 20 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 20.** 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 hold office for more than two consecutive terms.”

*SECTION 13. The provision of sub-clause (5) in Section 22 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“(5)** termination by Cabinet resolution upon the recommendation of the SEC, as advised by the SEC, due to gross incompetence in the performance of duty or due to underperformance, provided that the resolution shall state clear reason therefor.”

*SECTION 14. The following texts shall be inserted as Section 22/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 22/1** The Secretary-General shall not undertake any business or work for any entrepreneur, organization or company or hold a position as specified in the first paragraph of Section 16/2 within two years from the date on which he vacates the office.

In considering the salary and other remunerations of the Secretary-General, the prohibition in accordance with the first paragraph shall be taken into the account.”

*SECTION 15. The following texts shall be inserted as Section 24/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 24/1** To protect the public interest or investors, the Office or the person designated in writing by the Office shall have the duty to disclose information concerning issuance or offering for sale of securities, company issuing or offering for sale of securities, securities company, Securities Exchange, over-the-counter centre, organization related to securities business or information relating to any violation and penalty imposed on the violators, including any other information obtained in the performance of duties under this Act.”

*SECTION 16. The provision of Section 28 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 28.** Termination of the positions of officers including retirement shall be in accordance with the regulation specified by the SEC.

In case where there is reasonable cause, having taken into account of the position and nature of work responsible by the officers prior to the termination of position or duty in the Office, the SEC shall have the power to prescribe regulation to apply Section 22/1 with such officers, *mutatis mutandis*.”

*SECTION 17. The following texts shall be inserted as Section 22/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 29/1** In the execution of his duties provided in accordance with this Act, the Chairman of the SEC, the commission members of the SEC, the commission members of the Capital Market Supervisory Board and the Secretary-General shall be an official under the Criminal Code.”

*SECTION 18. The following texts shall be inserted as Section 31/1 and Section 31/2 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 31/1** The Office shall prepare the annual report concerning the financial condition and the business operation to the Minister within one hundred and twenty days from the end of the fiscal year.

**SECTION 31/2** The Office shall prepare the operating plan and explanation concerning the operating plan in materiality in form of the three year plan and file with the Minister.”

*SECTION 19. The following texts shall be inserted as Division 3 The Selection Committee – Section 31/3, Section 31/4, Section 31/5, Section 31/6 and Section 31/7 in Chapter 1 The Securities and Exchange Commission of the Securities and Exchange Act B.E. 2535:*

**“DIVISION 3  
THE SELECTION COMMITTEE**

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**SECTION 31/3** In cases where it is necessary to appoint the commission member in the SEC or in the Capital Market Supervisory Board, the Minister shall appoint seven committee members comprising the Selection Committee to nominate experts to be the commission member of the SEC or the Capital Market Supervisory Board.

The committee members under the first paragraph shall be appointed from the persons having been in the positions 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 commission member in the SEC.

The 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 the benefit or interest in materiality in the matter to the performance in accordance with this Act during his appointment and performing his duty.

The Selection Committee under the first paragraph shall elect a committee member to be the Chairman of the Selection Committee.

The committee member shall receive remuneration from the Office as specified by the Minister. The remuneration shall be deemed to be expenses for the operation of the Office.

**SECTION 31/4** The Selection Committee shall prescribe the rule governing the proposal of names, consideration and nomination of the commission member in the SEC or in the Capital Market Supervisory Board within thirty days from the date of appointment. The rule shall at least require the specification of information concerning knowledge and experience of the experts which is beneficial to the proposed position, provided that the information must be sufficient for the Selection Committee to operate nomination process.

The rule under the first paragraph shall be approved by the Minister and shall continue to be in effect even though the Selection Committee which prescribes such rule has been vacated its office.

Amendment or cancellation of the rule or issuance of new rule may be made only by the resolution of the Selection Committee with at least two-third of all committee members and shall be in effect upon the approval of the Minister.

The Selection Committee shall make the rule so prescribed under this Section available for public access.

**SECTION 31/5** The Selection Committee shall be vacated its office when the nomination process and the appointment of commission members in the SEC or in the Capital Market Supervisory Board has been completed as specified in the mission upon the appointment of the Selection Committee.

**SECTION 31/6** At least two-third of the committee members of the Selection Committee shall form a quorum.

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

**SECTION 31/7** In operating the nomination process for the commission members, the Chairman of the SEC and the *ex officio* commission members in cases of the SEC or the Chairman of the SEC and the Secretary-General in cases of the Capital Market Supervisory Board, shall jointly propose to the Selection Committee a list of experts comprising two times the number of commission members to be appointed. After the Selection Committee has considered the experts qualified to be appointed as the commission members, it shall propose names of nominated persons to the Minister for issuance of the order of appointment.

In cases where the Selection Committee does not approve the proposed names of experts under the first paragraph, the Selection Committee shall have the power to require newly proposed list of experts.”

*SECTION 20. The provision of Section 33 and Section 34 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 33.** No company shall offer for sale newly issued securities in the category of shares, debentures, bills, certificates representing the rights to purchase shares, certificates representing the rights to purchase debentures, and other securities as specified by the SEC, unless such offering:

- (1) falls within Section 63;
- (2) obtained an approval from the Office and complied with Section 65 or
- (3) is an offer for sale of newly issued securities by public company limited and is made entirely to its shareholders in the proportion of their existing shareholding and in consideration of full payment for value offered.

**SECTION 34.** Offer for sale newly issued shares by limited company under the Civil and Commercial Code, regardless of whether it is made by the limited company issuing such shares or by shareholders of such limited company, shall not be made in form of general offering or to public at large except it is exempted or complies with rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.”

*SECTION 21. The following texts shall be inserted as Division 3/1 Governance of Publicly Traded Company – Section 89/1 to Section 89/32 of the Securities and Exchange Act B.E. 2535:*

## **“CHAPTER 3/1**

### **GOVERNANCE OF PUBLICLY TRADED COMPANY**

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**SECTION 89/1** In this Chapter;

“company” means

- (1) a public limited company approved to offer for sale of newly issued shares to the public except a public limited company with characteristics as specified in 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 over-the-counter 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;
- (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 specified in the notification of the Capital Market Supervisory Board.

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

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

(2) the spouse, a minor child or a 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;

(4) any other persons as specified in the notification of the Capital Market Supervisory Board.

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 as 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 percent 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.

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

(1) gives information, cooperates or giving assistance by any means to the SEC, the Capital Market Supervisory Board or the Office in cases where the officer, the employee or such other persons believe or have reasonable ground to honestly believe that there has been contravention or failure to comply with this Act;

(2) gives statement, files document or evidence 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 cases where it is suspicious that there has been contravention 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**

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**SECTION 89/3** 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 in respect of trustworthiness in managing business whose shares are held by public shareholders as specified in the notification of the SEC.

**SECTION 89/4** In addition to the ground for removal from directorship as specified by the law on public limited companies, a director shall be removed from his directorship upon possession of any characteristic indicating a lack of appropriateness in respect of trustworthiness in managing business whose shares are held by public shareholders under Section 89/3 and shall not remain in his directorship in the company.

**SECTION 89/5** 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 notwithstanding it is subsequently found certain defect in the qualifications or prohibited characteristics of the directors or lacking of appropriateness under Section 89/3.

**SECTION 89/6** An executive shall have qualifications and shall not have prohibited characteristics indicating a lack of appropriateness in respect of trustworthiness in managing business whose shares are held by public shareholders as specified in the notification of the SEC.

The executive who lacks of qualifications or has prohibited characteristics under the first paragraph shall be removed from his position and shall not remain in his position in the company.

## **DIVISION 2**

### **DUTY AND RESPONSIBILITY OF DIRECTOR AND EXECUTIVE**

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**SECTION 89/7** In conducting the business of the company, a director and an executive shall perform his duty with responsibility, due care and loyalty, and shall comply with all laws, the objectives, the articles of association of the company, the resolutions of the board of directors and the resolutions of the shareholders' meeting.

**SECTION 89/8** In performing duty with responsibility and due care, a director and an executive shall act in the similar manner as an ordinary 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** 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;
- (3) qualification, knowledge, capability, and experience including purposes of appointment.

**SECTION 89/10** In performing the duty with loyalty, a director and an executive shall

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

**SECTION 89/11** Any of the following acts, which provides a director, an executive or a related person any financial benefits other than those should be ordinarily obtained or causes damages to the company, shall be presumed as the act in significant conflict with the interest of the company:

- (1) entering into transaction between the company or the subsidiary and the director or related person which does not comply with Section 89/12 or Section 89/13;
- (2) use of learned information other than that already disclosed to the public or;
- (3) use of asset or business opportunity of the company in contravention to the rule or general practice as specified in the notification of the Capital Market Supervisory Board.

**SECTION 89/12** 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 shareholders' meeting, unless such transaction is categorized as any of the following manners;

- (1) a transaction with the same commercial terms as those an ordinary person would agree with any unrelated counterparty under the similar circumstances, on the basis of commercial negotiation and without any dependent interest resulted from the status of the director, executive or related person, as the case may be, provided further that the said commercial terms have been approved by the board of directors or in compliance with the principle approved by the board of directors;
- (2) a loan in accordance with the regulations on the welfare of the staff members and employees;
- (3) a transaction in which the counterparty to the company or both parties are;
  - (a) a subsidiary or subsidiaries whose shares are held by the company in the amount not less than ninety percent of its total number of shares sold; or

(b) a subsidiary or subsidiaries whose shares are held by a director, an executive or a related person or which such person has interest, whether directly or indirectly, not more than the amount, rate or characteristic as specified in 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 specified in the notification of the Capital Market Supervisory Board.

In specifying the notification 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** Where circumstances render it reasonable, by considering the significant results of the transaction to the company or the relationship between such transaction and the ordinary business of the company, the Capital Market Supervisory Board shall be empowered to specify 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 entering into such transaction to general investors, or in a notice calling the meeting of the board of directors or a shareholders' meeting;

(2) amount of votes at the shareholders' meeting in the resolution which approves entering into such transaction;

(3) rules governing the shareholders' meetings including arrangement of voting cards of shareholders, arrangement of an inspector for the shareholders' meeting or consideration of special interest of a shareholder who shall not be entitled to vote.

**SECTION 89/14** 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 specified in the notification of the Capital Market Supervisory Board.

**SECTION 89/15** The board of directors shall appoint 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 director meeting, a minute of meeting of the board of directors and an annual report of the company;

(c) a notice calling shareholder meeting and a minute of shareholders' meeting;

(2) keeping a report on interest filed by a director or an executive;

(3) performing any other acts as specified in the notification of the Capital Market Supervisory Board.

In cases where the company secretary vacates his position or is incapable of performing his duty, the board of directors shall appoint a new company secretary within ninety days from the date on which the company secretary has vacated his position or has been incapable of performing his duty; in this regard, the board of directors shall be empowered to assign any director to perform the duty as the substitutes during such period.

The Chairman shall notify the Office of the name of 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** A company secretary shall submit a copy of report on interest under Section 89/14 to the Chairman and the Chairman of audit committee within seven business days from the date on which the company has received such report.

**SECTION 89/17** 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 producing 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 allow retrievability without any change of information.

**SECTION 89/18** 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 cases where the director acts or omits to act constituting non-compliance with 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 disgorgement of such benefits to the company.

In cases where a shareholder or shareholders who hold shares and have the right to vote amounting to not less than five percent of the total number of voting rights of the company have issue 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 the disgorgement of benefits under the first paragraph on behalf of the company.

In cases where the shareholder or shareholders bring the action under this Section on behalf of the company, if the court is of the opinion 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 expense as the court thinks fit; in this regard, for the purpose of determining such compensation, the court shall be empowered to order the company to be a party in the case.

**SECTION 89/19** The provision of Section 89/18 shall apply to the case against an executive to act or omit to act constituting non-compliance with his duty under Section 89/7 or to disgorge undue benefits obtained by him or the director or related person, *mutatis mutandis*.

**SECTION 89/20** The directors and the executives shall be jointly liable to a person who traded securities of the company for any damages arising from disclosure of information to shareholders or public which contains a false statement or concealing material 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 shareholders' meeting;
- (2) financial statements and reports concerning the financial condition and the business operation of the company or any other reports 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 reports in relation to the business prepared by the company for the purpose of disclosure to shareholders or public as specified in the notification of the Capital Market Supervisory Board.

In bringing an action to claim for the 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.** Any 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 that it should have been obtained, shall not be allowed to make use of an approval or ratification by the shareholders' 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:

- (1) request of a resolution of the board of directors or the shareholders' meeting by presenting a false statement or concealing material facts which should have been stated therein;
- (2) cases relevant to misappropriation of asset or benefit of the company;
- (3) cases relevant to exploiting asset of the company for benefit.

**SECTION 89/22.** The provisions in relation to duties and responsibilities of director and executive under Section 89/7 to Section 89/21 including the related penalty provisions shall apply *mutatis mutandis* to the following persons:

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

**SECTION 89/23.** 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 shareholders' 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.** 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 the director and executive 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.** 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 to conduct the audit work of such juristic person, if the auditor discovers any suspicious circumstance that the director, manager or any person responsible for the operation of such juristic person commits an offence under the second paragraph of Section 281/2, 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 inspection without delay and the audit committee shall report the result of preliminary inspection to the Office and the auditor within thirty days.

In cases where 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.

**SECTION 89/26.** In a shareholders' 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 shareholders' 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.

**SECTION 89/27.** The Capital Market Supervisory Board shall have the power to specify 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 delivery of the notice calling such meeting.

**SECTION 89/28.** A shareholder or shareholders who hold shares and have the right to vote amounting to not less than five percent 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 shareholders' 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 specified 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 shareholders' 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 operation 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 shareholders' meeting for its consideration within the previous twelve months and received the supporting votes of less than ten percent 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 shareholders' meeting;
- (5) any other cases as specified in the notification of the Capital Market Supervisory Board.

In cases where the board of directors refuses to include the matter proposed by the shareholders under the first paragraph as the agenda in any shareholders' meeting, it shall be notified as the matter for information in that shareholders' meeting and specified the reasons of such refusal.

In cases where 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 shareholders' meeting.

**SECTION 89/29.** The following transactions shall be approved by the shareholders' meeting, if significant to the company in accordance with rules as specified 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 or the claim over any person who causes damage to the company regardless of whether such right and interest or claim 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, providing credit facility, guarantee, engaging in juristic act binding the company to increase its cost of capital in cases where third person lacks liquidity or is unable to perform the obligation or giving financial assistance to other persons in any other means which is not the ordinary business of the company regardless of whether the said act is done by the company or the subsidiary;
- (7) any other acts as specified in the notification of the Capital Market Supervisory Board.

The Capital Market Supervisory Board shall have the power to specify the additional rules governing the following matters to apply to the operation of the company under the first paragraph:

- (1) disclosure of information to investors in relation to the operation of the company under the first paragraph, or information in written notice calling for the meeting of the board of directors or the shareholders' meeting;
- (2) amount of vote in the shareholders' meeting exercised for an approval of the said transactions.

**SECTION 89/30.** In a shareholders' 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 percent of the total number of the voting rights of the company may file a motion with the court to order cancellation of a resolution passed at such meeting. In this regard, the provisions concerning filing a motion to the court to order cancellation of a resolution of a shareholder meeting in accordance with the law on public limited companies shall apply *mutatis mutandis*.

**SECTION 89/31.** Solicitation, leading or doing any act in general manner to shareholders of the company with a view to enticing the shareholders to give proxy to the person doing such act or any other persons to attend and vote at the shareholders' meeting on their behalf, shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

**SECTION 89/32.** A company may arrange a shareholders' 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 those in the other meeting rooms in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

*SECTION 22. The provision in the second paragraph of Section 90 of the Securities and Exchange Act B.E. 2535 shall be repealed.*

*SECTION 23. The provision of Section 102 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 102.** 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 specified in the notification of the Capital Market Supervisory Board”

*SECTION 24. The provision in sub-clause (4) of Section 103 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“(4)** being a director, a manager or a person with power of management of any other securities companies, unless it is exempted under the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board;”

*SECTION 25. The provision in sub-clause (8) of Section 103 of the Securities and Exchange Act B.E. 2535 shall be repealed.*

*SECTION 26. The following texts shall be inserted as Section 111/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 111/1** When a securities company become a debtor by judgment, a debtor under receivership or is ordered by the government or any regulatory body under any other laws 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 customer and the asset deemed to be owned by customer, as the case may be. In this regard, the item and amount of assets as indicated in the account prepared by the securities company, in accordance with the rules specified in 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 particular categories of securities business as

specified in 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 which the securities company received, acquired or held 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 over-the-counter 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 customer assets and any other assets acquired in substitution for the customer assets, including any 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 particular categories of securities business as specified in the notification of the Capital Market Supervisory Board;

(2) securities or any other financial instruments held by a securities company in its own account, which are of the same class and type of securities or financial instrument issued by an issuer or mutual fund project as those owned by the customer, provided that, the amount of which shall be limited to that required for return the same class and type of securities or financial instrument to satisfy the claim of the customer against the securities company.”

**SECTION 27.** The provision of Section 113 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:

“**SECTION 113.** In operating the business of securities brokerage, a securities company shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.”

*SECTION 28. The following texts shall be inserted as Section 170/1 of the Securities and Exchange Act B.E. 2535:*

“**SECTION 170/1** In cases where it is evident to the SEC that the rules of the Securities Exchange may cause damage to or prejudice the public interest or insufficient to protect and maintain investor confidence, the SEC shall have the power to order the Securities Exchange to issue additional rules or revoke, alter or modify the existing rules.”

*SECTION 29 The following texts shall be inserted as the third paragraph of Section 184 of the Securities and Exchange Act B.E. 2535:*

“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.”

*SECTION 30. The provision of Section 190 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 190.** In the purchase or sale of listed securities, the retention or the return of such securities, securities of the same category, type and amount of the same juristic person or the same mutual fund project may be used as substitutes.”

*SECTION 31. The provision of Section 195 and Section 196 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 195.** In cases where the owner of securities has entered into an agreement allowing a securities company to retain listed securities as collateral for a loan on his behalf, 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 specified in 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.** Prior to the enforcement upon listed securities which have been held as collateral of a loan in accordance with 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.”

*SECTION 32. The provision of Section 212 of the Securities and Exchange Act B.E. 2535 shall be repealed.*

*SECTION 33. The provision of Section 216 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 216.** 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 34. The following texts shall be inserted as Section 223/1, Section 223/2, Section 223/3, Section 223/4 and Section 223/5 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 223/1** Any obligations either as a counterparty or through novation in a securities trading agreement by the clearing house and the placement of collateral, if undertaken in accordance with the clearing house’s rules as approved by the Capital Market Supervisory Board, shall be legally binding and enforceable by law.

**SECTION 223/2** In cases where the clearing house enters into an obligation in a securities trading agreement either as counterparty or through novation, the clearing house shall be bound to 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** In cases where 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** In cases where 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** In cases where 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 purposes 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.”

*SECTION 35. The provision in the first paragraph of Section 224 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 224.** In cases where 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 specified in the notification of the Capital Market Supervisory Board under Section 223.”

*SECTION 36. The provision in the second paragraph of Section 228 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

“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 specified in the notification of the Capital Market Supervisory Board.”

*SECTION 37. The following texts shall be inserted as Section 228/1 and Section 228/2 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 228/1** 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 specified in the notification of the Securities Exchange, with the Capital Market Supervisory Board’s approval.

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** 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 38. The provision of Section 229 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 229.** In cases where 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 the first paragraph, the provision of Section 225, Section 226, Section 227, Section 228 and Section 228/1 shall apply *mutatis mutandis*. In cases where those provisions specify the powers and duties of the Capital Market 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 provisions shall mean the Bank of Thailand.”

*SECTION 39. The definition of “business” in Section 245 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

““business” means a company whose securities are listed in the Securities Exchange or traded in an over-the-counter centre, or a public limited company having characteristics as specified in the notification of the Capital Market Supervisory Board.”

*SECTION 40. The provision of Section 246 and Section 247 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**SECTION 246.** 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 percent 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 specified in the notification of the Capital Market Supervisory Board.

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 specified in the notification of the Capital Market Supervisory Board.

**SECTION 247.** 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 percent 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.

In cases where 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 specified in the notification of the Capital Market Supervisory Board.”

*SECTION 41. The provision of Section 250 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**SECTION 250.** Upon the 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 specified in the notification of the Capital Market Supervisory Board.”

*SECTION 42. The following texts shall be inserted as Section 250/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 250/1** 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 specified in 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 43. The provision of Section 258 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“SECTION 258.** 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 percent 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 percent 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 percent 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 percent 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 percent 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), (6) or the limited partnership under (8) is a partner;

(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), (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 44. The provision in Chapter 9 the Appellate Committee - Section 260 and Section 261 of the Securities and Exchange Act B.E. 2535 shall be repealed.*

*SECTION 45. The following texts shall be inserted as Section 262/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 262/1** 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 conditions of the capital market or derivative market or the guideline for the supervision of the capital market or derivative market.”

*SECTION 46. The following texts shall be inserted as Section 264/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 264/1** Upon request of 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 purposes of this Section, the provision of Section 264 shall apply *mutatis mutandis*.”

*SECTION 47. The following texts shall be inserted as Section 267/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 267/1** 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 both.”

*SECTION 48. The following texts shall be inserted as Section 281/1 to Section 281/10 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 281/1.** 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.

In cases where 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 both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

**SECTION 281/2** Any director or executive of the company who fails to perform his duties with responsibility, due care and loyalty 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.

In cases where a person who commits an offence under the first paragraph committed with dishonest intent 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 both.

**SECTION 281/3** 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** Any board of director of the company who 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 Chairman 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 baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

**SECTION 281/5** 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** 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** 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.

In cases where 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 both.

**SECTION 281/8** Any auditor or audit committee of any securities 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** 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** Any person having the duty to disclose document to shareholders or general public as specified in the provisions of the Chapter 3/1 Governance of Publicly Traded Company, who makes a false statement or conceals material 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 both.

*SECTION 49. The provision of Section 283 of the Securities and Exchange Act B.E. 2535 as amended by the Securities and Exchange Act (No.2) B.E. 2542 shall be amended and replaced by the following texts:*

**“SECTION 283.** In cases where 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 both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.

In cases where 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 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 both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.”

*SECTION 50. The provision in the third paragraph of Section 285 bis of the Securities and Exchange Act B.E. 2535 as amended by the Securities and Exchange Act (No.2) B.E. 2542 shall be amended and replaced by the following texts:*

“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 both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.”

*SECTION 51. The provision in the second paragraph of Section 286 bis of the Securities and Exchange Act B.E. 2535 as amended by the Securities and Exchange Act (No.2) B.E. 2542 shall be amended and replaced by the following texts:*

“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 both, unless it can be proven that such person has no involvement with the commission of offence by such securities company.”

*SECTION 52. The provision of Section 290 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

“**SECTION 290.** Any over-the-counter 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 conditions or orders issued in accordance with 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 53. The provision of Section 299, Section 300 and Section 301 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

“**SECTION 299.** 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.** In cases where 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 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.** In cases where 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 54. The following texts shall be inserted as Section 315/1 of the Securities and Exchange Act B.E. 2535:*

**“SECTION 315/1** In cases where 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 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 percent of such fine, provided that such payment shall be made only when the judgment of the court becomes final.

In cases where there is the settlement of offences in accordance with 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 percent of such fine.

The Capital Market Supervisory Board shall have the power to prescribe the rule, 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 commission members of the Capital Market Supervisory Board, the Secretary-General and the officer of the Office;
- (2) the directors, the manager and the officer of the Securities Exchange or over-the-counter centre.

*SECTION 55. The provision of Section 317 of the Securities and Exchange Act B.E. 2535 shall be amended and replaced by the following texts:*

**“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.”

**SECTION 56** “The SEC” in Section 6, Section 35, Section 40, Section 41, Section 42, Section 43, Section 46, Section 56, Section 59, Section 60, Section 67, Section 69, Section 70, Section 71, Section 80, Section 88, Section 92, Section 98, Section 100, Section 103, Section 109, Section 112, Section 114, Section 115, Section 116, Section 117, Section 119, Section 124, Section 125, Section 130,

Section 133, Section 134, Section 135, Section 140, Section 141, the first paragraph of Section 143, Section 145, Section 181, Section 199, Section 210, Section 223, Section 248, Section 252, Section 255, Section 256 of the Securities and Exchange Act B.E. 2535 as amended shall be replaced by “the Capital Market Supervisory Board”.

**SECTION 57** The Minister of Finance shall nominate a person to the Cabinet for its consideration to appoint such person as the Chairman of the Securities and Exchange Commission under Section 8 of the Securities and Exchange Act B.E. 2535 as amended by this Act within sixty days from the date on which this Act comes into force.

**SECTION 58** The Minister of Finance shall appoint the experts chosen by the following nomination process as the commission members in the Securities and Exchange Commission under Section 8 of the Securities and Exchange Act B.E. 2535 as amended by this Act :

(1) within thirty days from the date on which this Act comes into force, the commission members in the Securities and Exchange Commission appointed by the Cabinet who remains in the office prior to the date on which this Act comes into force shall draw lots in order to select three commission members. In this regard, retirement by drawing lots shall be deemed as retirement upon the expiration of the term of office;

(2) within thirty days from the date on which the Chairman of the Securities and Exchange Commission is appointed under Section 57, the Chairman of the Securities and Exchange Commission and the *ex officio* commission members shall jointly propose the list of experts qualified to be appointed as the commission members of the Securities and Exchange Commission, two times the number of the commission members to be appointed, to the Selection Committee under Section 31/3 of the Securities and Exchange Act B.E. 2535 as amended by this Act. The Selection Committee shall commence the nomination process and propose the names of nominated persons to the Minister of Finance within thirty days from the date of receiving the list of experts.

When two years from the date of appointment has elapsed, the commission members under (1) shall retire from the office.

**SECTION 59** The Securities and Exchange Commission under Section 8 of the Securities and Exchange Act B.E. 2535 remaining in the office prior to the date on which this Act comes into force shall remain in the office and performing its duty until the Chairman of the Securities and Exchange Commission is appointed under Section 57 and the commission members are appointed under Section 58.

**SECTION 60** The Securities and Exchange Commission shall perform the duty and function of the Capital Market Supervisory Board under the Securities and Exchange Act B.E. 2535 as amended by this Act until the Capital Market Supervisory Board is appointed.

The Chairman of the Securities and Exchange Commission and the Secretary-General of the Office of the Securities and Exchange Commission shall jointly propose the list of experts qualified to be appointed as the commission members of the Capital Market Supervisory Board under Section 16/1 of the Securities and Exchange Act B.E. 2535 as amended by this Act to the Selection Committee in order to undertake the nomination process under Section 31/7 of the Securities and Exchange Act B.E. 2535 as amended by this Act.

**SECTION 61** The Secretary-General of the Office of the Securities and Exchange Commission who remains in the office prior to the date on which this Act comes into force shall remain in the office until the Securities and Exchange Commission is appointed under the first paragraph of Section 58.

The provision of Section 22/1 of the Securities and Exchange Act B.E. 2535 as amended by this Act shall not apply to the Secretary-General of the Office of the Securities and Exchange Commission whose office is vacated under the first paragraph.

The Secretary-General of the Office of the Securities and Exchange Commission whose office is vacated under the first paragraph may be nominated for the appointment of another term of office.

**SECTION 62** Where the Appellate Committee under Section 260 of the Securities and Exchange Act B.E. 2535 has received the appeal under Section 261 of the said Act prior to the date on which this Act comes into force, the Appellate Committee shall consider and make decision on such appeal in accordance with notification or regulation applicable thereto.

**SECTION 63** All notifications, rules, orders or regulations issued by the Securities and Exchange Commission under the Securities and Exchange Act B.E. 2535 prior to the date on which this Act comes into force shall remain in force until notifications, rules, orders or regulations otherwise issued under this Act come into force.

**SECTION 64** The Minister of Finance shall be in charge of the enforcement of this Act.

Countersigned by:

General Surayuth Julanont

Prime Minister

(Ref.: Government Gazette, Volume 125, Part 42 Kor, dated 4 March B.E. 2551)