

Governance of Publicly Traded Company

- Definition (Section 89/1)
- Qualifications and the removal of directors and executives (Section 89/3 - 89/6)
- Duty and responsibility of directors and executives (Section 89/7 - 89/14)
- Shareholders' rights under Chapter 3/1 (Section 89/26, 89/28, 89/30)
- Shareholders' right to bring a derivative action and a private lawsuit against directors and executives (Section 89/18 - 89/20)
- Criminal liability of directors and executives (Section 281/2, 281/3, 281/4, 281/6, 281/10, 306 - 315)
- Imposing of civil sanctions on specified offences against directors and executives (Section 317/1(2)(3))
- Whistle blower (Section 89/2, 89/25)

Prevention of Unfair Securities Trading Practices (Section 238 - 244/7)

- Penal provision for unfair securities trading practices (Section 296 - 297/1)
- Civil sanctions for unfair securities trading practices (Section 317/7 - 317/14)

Company Secretary (Section 89/15 - 89/16, 89/23)

- Penal provision (Section 281/5, 281/7)

Auditor of Publicly Traded Company (Section 61 - 62)

(Translation)

Securities and Exchange Act

B.E. 2535

(As Amended)

BHUMIBOL ADULYADEJ, REX.,

Given on the 12th day of March B.E. 2535;
Being the 47th Year of the Present Reign.

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

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

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

SECTION 1. This Act shall be called the "Securities and Exchange Act, B.E. 2535".

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

SECTION 3. The following Acts shall be repealed:

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

SECTION 4. In this Act

"securities" means

- (1) treasury bills;
- (2) bonds;
- (3) bills;

Published in the Government Gazette, Volume 109, Part 22, dated 16 March B.E. 2535

This English translation of Securities and Exchange Act B.E. 2535 (1992) was originally prepared by the SEC Office and Chandler and Thong-ek Law Offices Limited.. Owing to the fourth amendment of the Securities and Exchange Act which comes into force in B.E. 2551 (2008), the English translation has been revised by the staff of the SEC Office. It is important to note that this is an unofficial English translation which has not been subjected to an official review by the SEC Office. Readers should be aware that only the original Thai text has legal force and the English translation is strictly for reference. Accordingly, the SEC Office cannot undertake any responsibility for its accuracy, nor be held liable for any loss of damages arising from or related to its use.

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

"bill" means any bill issued for raising funds from the public as specified in the notification of the SEC.

"debenture" means any debt instrument of whatever name excluding bills, divided into units, each with equal value and a predetermined rate of return, issued by any company to a lender or purchaser, representing the right of the holder of such instrument to receive money or other benefit.

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

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

"company"⁴ means any limited company, public limited company and shall include :

- (1) public organization;
- (2) provincial administration organization, municipality, Bangkok Metropolitan Administration, 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;
- (4) juristic person established by specific law; and
- (5) issuing entity established in any other forms as specified in the notification of the SEC.

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

⁴ indicated amendment by the Securities and Exchange Act (No. 4) B.E. 2551

"securities business" means any of the following securities businesses:

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

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

"securities dealing" means a purchase, sale or exchange, outside the Securities Exchange or an over-the-counter center, of securities, for one's own account in the normal course of business.

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

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

"mutual fund management"³ means the management of investments under a mutual fund project by issuing investment units of each project for sale to the public and bringing proceeds therefrom to invest in, or procure for profit from holding in, securities, derivative, or any other properties, or invest in or procure for profit by other means.

"private fund management"² means the management of funds of a person or group of persons who has authorized the management of investment to acquire benefit from securities, whether or not investment in other assets is also made, which management is conducted as an ordinary course of business, in consideration of a fee or other remuneration, excluding the management of investment as specified in the notification of the SEC.

"listed securities" means registered or authorized securities for trading in the Securities Exchange.

³ indicated amendment by the Securities and Exchange Act (No. 3) B.E. 2546

² indicated amendment by the Securities and Exchange Act (No. 2) B.E. 2542

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

"SEC Office" means the Office of the Securities and Exchange Commission.

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

"Minister" means the Minister in charge of the enforcement of this Act.

SECTION 5.⁴ Unless otherwise specified by the provisions of this Act, the SEC, the Capital Market Supervisory Board, the SEC 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 also be notified of the reasons therefor.

SECTION 6.⁴ Where the signatures of the directors or registrar are required in securities certificates under this Act, the Capital Market Supervisory Board may specify that such signatures may be stamped by machine or by other means. In such event, the rules and procedures as specified in the notification of the Capital Market Supervisory Board must be complied with.

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

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

CHAPTER 1

SUPERVISION OF SECURITIES AND EXCHANGE

DIVISION 1

SECURITIES AND EXCHANGE COMMISSION

SECTION 8.⁴ A Securities and Exchange Commission hereby referred to as the "SEC" shall be established, comprising the Chairman appointed by the Cabinet upon recommendation of the Minister of Finance, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Commerce and the Governor of the Bank of Thailand and at least four but not exceeding six experts appointed through nomination in accordance with Section 31/7 as commissioners, among whom there shall be at least one legal expert, one accounting expert and one financial expert. The Secretary-General shall be a commissioner and the secretary of the SEC

SECTION 9.⁴ The Chairman and each commissioner 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) being or having been a political official or holding or having held any position in a political party unless having vacated such position not less than one year;
- (5) being an officer or an employee of the SEC Office;
- (6) being a manager or a person with power of management of the operation of securities business, the Securities Exchange, over-the-counter center, organization related to securities business, derivatives business, derivatives trading center, 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 SEC Office.

In case where any 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 commissioner, under the circumstance of which there shall be appointment of another person as the Chairman or commissioner, as the case may be.

SECTION 10.4 The Chairman and each commissioner 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 expiration of the term of office, the appointment of new Chairman and commissioners shall be made within sixty days. During the period when new Chairman or new commissioners, as the case may be, have not yet been appointed, the retiring Chairman or commissioners shall remain in office until their successors assume their duties.

SECTION 11.4 Apart from retirement upon expiration of the term of office under Section 10, the office of the Chairman and a commissioner 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's resolution upon recommendation of the Minister in cases of the Chairman or by the Minister's order upon recommendation of the SEC which has passed a resolution with at least two-thirds of all commissioners in cases of a commissioner, provided that the resolution and the order shall state clear reason therefor.

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

⁵During the period when no appointment of the Chairman or a commissioner of the SEC has been made, the remaining commissioners shall retain their offices on the condition that there are at least six persons holding such position.

SECTION 12. At least half of the commissioners of the SEC shall form a quorum.

If the Chairman of the SEC is not present at the meeting or cannot perform his duty, and if there is a Vice-Chairman, the Vice-Chairman present at the meeting shall be the Chairman of the meeting. If there is no Vice-Chairman or there is a Vice-Chairman who is not present at the meeting or cannot perform his duty, the commissioners present at the meeting shall elect one of the commissioners to be the Chairman of the meeting.

Decisions shall be made at the SEC meeting upon majority vote. Each commissioner is entitled to one vote. In the event of a tied vote, the Chairman of the meeting shall have a casting vote.

SECTION 13. Any commissioner 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 14. The SEC shall have the power and duty to formulate policies to promote and develop, as well as to supervise, matters concerning securities, securities businesses, the Securities Exchange, over-the-counter centers, and related businesses, organizations related to securities business, issue or offer of securities for sale to the public, acquisition of securities for business takeovers, and prevention of unfair securities trading practices. Such power shall include:

- (1) the issuance of rules, regulations, notifications, orders, or directions under this Act;
- (2) the determination of fees for application for an approval, application for obtaining a license, a license, or for operating the business as licensed;
- (3) the issuance of rules relating to the duties of a sub-committee;
- (4) the issuance of rules, orders and regulations relating to personnel, personnel relations system, placement, appointment, dismissal and discipline for personnel and employees of the SEC Office, the determination of salary and other remuneration as well as welfare and assistance;

⁵ indicated amendment by the Securities and Exchange Act (No. 5) B.E. 2559

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

(5) any other activities to be implemented according to the objectives of this Act.

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

SECTION 14/1.⁴ The Audit Committee appointed by the SEC shall consist of at least three but not exceeding five committee members, among whom there shall be at least two committee members of the SEC who have been appointed by the Minister.

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

SECTION 14/2.⁴ 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 SEC Office;
- (3) coordinating with the Office of the Auditor General of Thailand in the matter of auditing financial statements;
- (4) re-examining and reviewing compliance of rules;
- (5) supervising the internal control unit;
- (6) performing any other duties assigned by the SEC.

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

SECTION 15.⁴ The SEC shall have the power to appoint a sub-committee to perform any matter as assigned by the SEC.

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

SECTION 16. The Chairman, commissioners of the SEC as well as members of sub-committees shall receive remuneration as specified by the Minister. The remuneration shall be deemed as expenses for the operation of the SEC Office.

DIVISION 1/1 THE CAPITAL MARKET SUPERVISORY BOARD⁴

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 board members by the Minister through nomination 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 SEC Office to be the secretary of the Capital Market Supervisory Board.

SECTION 16/2. Each board member appointed by the Minister shall be Thai national and shall not possess any prohibited characteristics in accordance with Section 9 and shall not be director, manager, person with power of management, officer, employee, advisor or any other positions of securities business, the Securities Exchange, over-the-counter center, organization related to securities business, derivatives business, derivatives trading center, derivatives clearing house, derivatives regulatory association or any other companies which are under supervision of the SEC, the Capital Market Supervisory Board or the SEC Office.

Any board member appointed 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 board member, under which circumstance there shall be appointment of another person as the board member.

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

Upon expiration of the term of office of board members, the Chairman of the SEC and the Secretary-General shall jointly propose a list of experts to the Selection Committee within sixty days for operating in accordance with Section 31/7; in this regard, the retiring board 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 expiration of the term of office, board members under Section 16/1 shall vacate their office upon:

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

- (4) termination by the Minister's order upon recommendation of the SEC which has passed a resolution with at least two-thirds of all board members, provided that the resolution and the order shall state clear reason therefor;
- (5) having the prohibited characteristics as provided in Section 16/2.

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

⁵During the period when no appointment of a commissioner has been made, the remaining commissioners of the Capital Market Supervisory Board shall retain their offices on the condition that there are at least five persons holding such position

SECTION 16/5. The board members of the Capital Market Supervisory Board shall prepare reports to the SEC Office on their 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) issuance of rules, regulations, notifications, orders or directions on securities business, issuance and offering of securities, Securities Exchange, securities depository center, clearing house, securities registrar, any association related to securities business and the acquisition of securities for business takeovers;
- (2) reporting the results of business performance sporadically to the SEC in accordance 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 board members of the Capital Market Supervisory Board and the sub-committee shall receive remuneration as specified by the SEC. The remuneration shall be deemed as expenses for the operation of the SEC Office.

DIVISION 2**THE OFFICE OF THE SECURITIES AND EXCHANGE COMMISSION**

SECTION 17. There shall be established an Office referred to as the "Office of the Securities and Exchange Commission (SEC Office)" which shall be a juristic person.

SECTION 18. The SEC Office shall have its head office in Bangkok or the nearby provinces. The SEC Office may establish its branches or representative offices anywhere.

SECTION 19.⁴ The SEC 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 20. The Cabinet, upon 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 21. The Secretary-General shall have the qualifications and shall not possess any of the prohibited characteristics as follows:

- (1) being able to perform his duty full time for the Office;
- (2) not being or having been a bankrupt;
- (3) not being a political official, an appointed member of a district council or district administration, or a member or official of any political party;
- (4) not being a civil servant having a permanent position or salary, or an officer or employee of any state enterprise, government organization, or district office;
- (5) not having a position or any responsibility or having an interest in a securities company.

SECTION 22. Apart from the expiration of the term of office, the position of the Secretary-General shall be vacated upon:

- (1) death;
- (2) resignation;

- (3) reaching the age of sixty years;
- (4) lack of qualifications or possession of prohibited characteristics under Section 21;
- (5)⁴ termination by the Cabinet's resolution upon 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 22/1.⁴ The Secretary-General shall neither undertake any business nor 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 for the Secretary-General, the prohibition in accordance with the first paragraph shall be taken into account.

SECTION 23. The Secretary-General shall have authority over the officers and employees and shall be responsible for the operation of the SEC Office.

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

SECTION 24. The Secretary-General shall be the representative of the SEC Office in the business of the SEC Office relating to third persons, and for this purpose the Secretary-General may authorize an agent or any other person to perform a specified act.

SECTION 24/1.⁴ To protect the public interest or investors, the SEC Office or the person designated in writing by the SEC 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 center, 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 25. The initial capital of the SEC Office shall comprise the money transferred in accordance with the provisions of Section 319 and Section 320.

SECTION 26. The SEC Office shall maintain reserves in accordance with the rules and procedures as specified by the SEC with the approval of the Minister.

SECTION 27. All fees specified in the ministerial regulations, other fees received by the SEC Office, and other income derived from the operation of the SEC and the SEC Office shall be the property of the SEC Office. After deducting the expenses and reserves under Section 26, the remaining income shall be remitted to the state.

SECTION 28.⁴ Termination of officers of the SEC Office including termination through retirement shall be in accordance with the regulation specified by the SEC.

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

SECTION 29. The laws relating to labour protection concerning compensation and compensation fund contribution, the law relating to labour relations, and the law relating to government enterprise official relations shall not apply to the Secretary-General, officers and employees of the SEC Office.

SECTION 29/1.⁴ In executing his duties in accordance with this Act, the Chairman of the SEC, the commissioners of the SEC, the board members of the Capital Market Supervisory Board and the Secretary-General shall be an official under the Criminal Code.

SECTION 30. The SEC Office shall establish an accounting system suitable for the operation of the SEC Office and shall have a regular internal audit.

SECTION 31. The Office of the Auditor General of Thailand shall be the auditor of the SEC Office and shall submit its report to the Minister within ninety days from the end of the fiscal year.

SECTION 31/1.⁴ The SEC Office shall prepare and submit the annual report on its financial condition and business operation to the Minister within one hundred and twenty days from the end of the fiscal year.

SECTION 31/2.⁴ The SEC Office shall prepare and file with the Minister, a three-year operating plan together with explanation for such plan in materiality.

DIVISION 3

THE SELECTION COMMITTEE⁴

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

The Selection committee members under the first paragraph shall be appointed from the persons having been in the positions of Permanent Secretary of the Ministry of Finance, Permanent Secretary of the Ministry of Commerce, Secretary-General of the Council of State, Secretary-General of the Office of the National Economic and Social Development Board, Governor of the Bank of Thailand, Secretary-General of the SEC Office or commissioners in the SEC.

The Selection committee members shall not be political official, member of the House of Representatives or member of the Senate and shall not have benefits or interest in materiality in the matter of performing in accordance with this Act during their appointment and performance of their duty.

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

The Selection committees member shall receive remuneration from the SEC Office as specified by the Minister. The remuneration shall be deemed as expenses for the operation of the SEC Office.

SECTION 31/4. The Selection Committee shall prescribe rules governing the proposal of names, consideration and selection of commissioners in the SEC or board members in the Capital Market Supervisory Board within thirty days from the date of appointment. The rules shall at least require specific information concerning knowledge and experience of the experts to be nominated which are beneficial to the proposed position and shall be sufficient for the Selection Committee to consider nomination of such experts.

The rules 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 rules have been vacated its office.

Amendment or cancellation of the rules or issuance of new rules may be made only by the resolution of the Selection Committee with at least two-thirds of all committee members and shall be in effect upon 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 vacate its office when the selection process and the appointment of commissioners in the SEC or the board member in the Capital Market Supervisory Board have been completed as specified in the mission upon appointment of the Selection Committee.

SECTION 31/6. At least two-thirds 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 nominating commissioners or board members, the Chairman of the SEC and the *ex officio* commissioners 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 commissioners or board members to be appointed. After the Selection Committee has considered the experts qualified to be appointed as the commissioners, it shall propose the names of the selected persons to the Minister for issuance of the order of appointment.

In cases where the Selection Committee does not approve the nominated experts under the first paragraph, the Selection Committee shall have the power to require that a new list of experts be proposed.

CHAPTER 2
ISSUANCE OF SECURITIES

DIVISION 1

APPROVAL FOR THE OFFERING OF NEWLY ISSUED SECURITIES

SECTION 32. No promoter of a public limited company shall offer newly issued shares for sale to the public or other persons unless having obtained an approval from the SEC Office and having complied with Section 65.

The application for approval under the first paragraph shall be made when such promoter has registered the memorandum of association in accordance with the law relating to public limited companies.

SECTION 33.⁴ 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 under Section 63;
- (2) has obtained an approval from the SEC Office and complied with Section 65 or
- (3) is an offer for sale of newly issued securities by a public company limited and is made entirely to its shareholders in proportion of their existing shareholding and in consideration of full payment for value offered.

SECTION 33/1.⁵ In case of an offering for sale of newly issued securities for a trust under the law on trust for transactions in the capital market in the categories of trust and securities as specified in the notification of the SEC, the SEC may specify that the following persons shall be the applicant for the offering for sale of securities under Section 33:

- (1) The would-be settlor or the settlor only in case of an initial public offering of newly issued securities;
- (2) The trust manager.

After an application for an offering for sale of newly issued securities has been filed, but not yet approved, the persons under (1) and (2) shall have the same duty and responsibility for disclosing information as the securities issuing company, and after the approval has been granted, the person under (2) shall have the duty and responsibility for disclosing information and comply with the provisions under Chapter 2: Issuance of Securities and Chapter 3: Public Offering of Securities, as similarly specified as duty and responsibility of the securities issuing company.

In cases where the SEC deems appropriate for the characteristics of the securities, the securities issuing company, the investors, and the offering for sale of securities, the SEC may grant a waiver to the persons under (1) and (2) or may allow such persons to act differently from the provisions under Division 4: Register and Transferability of Chapter 2: Issuance of Securities or Section 88, in whole or in part.

SECTION 33/2.⁵ In case of an offering for sale of newly issued securities in the category specified in the notification of the SEC whereby the return of such securities depends on the financial condition and the business operation of an entity who is not a securities issuing company and such entity gives consent thereto, the SEC may specify that such entity shall have the joint duty and responsibility with the securities issuing company in disclosing useful information for decision making of investors, which may as well include the disclosure of information prior to and after the offering for sale of newly issued securities has been approved.

SECTION 34.⁴ Offer for sale of newly issued shares by a 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 the form of general offering or to the public at large unless it is exempted or complies with rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

SECTION 35.⁵ The application for the offering of newly issued securities and its approval under Section 32 and Section 33 shall be in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board. In such event, the Capital Market Supervisory Board may specify the details of the following matters:

- (1) debt to equity ratio;
- (2) period for the offering for sale of securities;
- (3) subscription, underwriting and distribution of securities;
- (4) acceptance of payment and delivery of securities;
- (5) custody and arrangement concerning the payment for the subscription of securities;
- (6) any other conditions necessary to protect the public interest.

SECTION 35/1.⁵ Subject to Section 33, the SEC may grant a waiver of compliance to a company established by and subject to a foreign law whereby measures for investor protection are prescribed in a similar manner to the measures prescribed in the notification of the SEC, or may allow such company to act differently from the provisions under Division 2: Debentures, Division 3: Issuance of Secured Debentures, Division 4: Register and Transferability, or Division 5: Disclosure of Information and Auditor of this Chapter or under Chapter 3: Public Offering of Securities, in whole or in part, as deemed appropriate for the characteristics of the securities, the securities issuing company, the investors and the offering for sale of securities.

SECTION 36. In considering the application for approval, the SEC Office shall notify the applicant of the result within forty-five days from the date of receipt of the application together with the correct and complete documents in accordance with Section 35.

SECTION 37.⁵ The provision under Section 1229 of the Civil and Commercial Code which prohibits issuance of debentures by a limited company shall not apply to a limited company which has been granted an approval to issue debentures under this Act.

SECTION 38.⁵ The provision under Section 654 of the Civil and Commercial Code which prohibits fixing the interest over a specified rate shall not apply to the securities in the category of debenture and bill which are offered for sale under this Act.

DIVISION 2

DEBENTURES

SECTION 39. The par value of a debenture of a company shall not be less than one hundred baht which shall be paid in money and the purchaser cannot avail himself of a set-off against the company as to payment of the debenture.

SECTION 40.⁴ A debenture certificate shall contain at least the following particulars:

- (1) name of the company;
- (2) registration number of the company and the date of registration by the company registrar;
- (3) the total amount of debentures issued;
- (4) name of debenture holder or statement that it is a bearer debenture;
- (5) type, value, serial number, number and amount of debentures issued, interest rate as well as repayment period;
- (6) method, time and place for the payment of interest and redemption;
- (7) rights of the debenture holder in case the company incurred a debt before issuing the debenture;
- (8) procedures for the conversion of rights (if any);
- (9) signature of authorized director or debenture registrar;
- (10) the date of issue;
- (11) other particulars as specified in the notification of the Capital Market Supervisory Board.

DIVISION 3

ISSUANCE OF SECURED DEBENTURES

SECTION 41.⁵ In applying for an approval in accordance with Section 33 to issue secured debentures, the applicant shall also:

- (1) submit a draft of terms and conditions stating the rights and duties of the debenture issuer and the debenture holders;
- (2) submit a draft agreement appointing a debenture holder representative;
- (3) obtain approval for a person having qualifications as specified in the notification of the Capital Market Supervisory Board to be a debenture holder representative;
- (4) undertake any other acts as specified in the notification of the Capital Market Supervisory Board.

In cases where a public limited company offers newly issued secured debentures for sale to its shareholders, which does not require approval in accordance with Section 33, that public limited company shall also comply with the provisions of the first paragraph prior to making of such offer.

SECTION 42.⁴ The terms and conditions stating the rights and duties of the debenture issuer and debenture holders shall contain at least the following particulars:

- (1) rights and conditions under the debenture;
- (2) return arising from the debenture;
- (3) property used as collateral or other collateral;
- (4) appointment, power and duty of debenture holder representative;
- (5) conditions for the removal of debenture holder representative;
- (6) consent of debenture holders permitting the debenture issuer to appoint a debenture holder representative who has received an approval in accordance with Section 41(3);
- (7) representation of the debenture issuer to mortgage, pledge or provide other collateral against the debenture within the specified period of time in accordance with Section 44;
- (8) procedures for, time and place of payment of debt;
- (9) procedures for the conversion of rights (if any);
- (10) other particulars as specified in the notification of the Capital Market Supervisory Board.

SECTION 43.⁴ The agreement appointing a debenture holder representative shall contain at least the following particulars:

- (1) powers and duties of the debenture holder representative in the acceptance of mortgage, pledge or other collateral, in the exercise of rights to enforce such collateral, or in causing the debenture issuer to comply with the terms and conditions made with the debenture holders, including claims for compensation;

- (2) rate and method of remuneration of the debenture holder representative;
- (3) other particulars as specified in the notification of the Capital Market Supervisory Board.

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

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

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

SECTION 46.⁴ The Capital Market Supervisory Board shall have the power to issue rules, conditions and procedures for a debenture holder representative to act within his authority and responsibilities.

SECTION 47. In addition to the duties as specified in the appointment agreement, a debenture holder representative has the duty to look after the interests of the debenture holders.

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

In cases where a claim has been filed in court by the debenture holder, such debenture holder shall hold not less than ten percent of all the secured debentures sold or be appointed by other debenture holders who collectively hold not less than ten percent of all the secured debentures sold.

SECTION 48. In case the debenture holder representative commits an offence against property as stipulated in Chapter 1, Chapter 3, Chapter 4, Chapter 5, or Chapter 7, of Title 12 of the Criminal Code, the SEC Office shall be deemed as the injured party under the Criminal Procedure Code.

In the event under the first paragraph, the public prosecutor, after having brought the criminal case to court, has the power to claim property or price or compensation for damages on behalf of the injured person. For this purpose, the provisions concerning the procedure for filing a civil case in connection with a criminal case under the Criminal Procedure Code shall apply *mutatis mutandis*.

SECTION 49. If the debenture issuer intends to arrange for a debenture holder representative when issuing any type of debentures other than secured debentures, the debenture issuer shall declare its intention while making an application for the issuance of debentures and in such case the provisions of Section 41, Section 42, Section 43, Section 44, Section 45, Section 46, Section 47 and Section 48, including related penalty provisions, shall apply *mutatis mutandis* to the application for approval, the preparation of terms and conditions, and agreement appointing a debenture holder representative, the powers and duties of the debenture holder representative, including the filing of a case in court against the debenture holder representative.

DIVISION 4

REGISTER AND TRANSFERABILITY

SECTION 50.⁵ The company which issues debentures, certificates representing the rights to purchase shares, or certificates representing the rights to purchase debentures in accordance with Section 33 shall be required to keep a register of such securities holders in accordance with the rules and procedures as specified in the notification of the SEC Office.

SECTION 51.⁵ The transfer of name debentures, name certificates representing the rights to purchase shares, or name certificates representing the rights to purchase debentures issued in accordance with Section 33 shall be valid upon delivery of such securities with the endorsement of transfer by a person having his name as the owner or by the last transferee.

SECTION 52.⁵ Any person possessing a name debenture certificate, a name certificate representing the rights to purchase shares, or a name certificate representing the rights to purchase debentures issued in accordance with Section 33 with the endorsement of transfer in accordance with Section 51, shall be presumed to be the owner of such securities.

SECTION 53.⁵ The transferee of name debentures, or name certificates representing the rights to purchase shares, or name certificates representing the rights to purchase debentures issued in accordance with Section 33, who intends to register such transfer, shall submit the application to the securities issuing company or the registrar together with the securities certificates which he has signed his name as the transferee on the back of the certificates. In such event, the securities issuing company or the registrar, as the case may be, shall enter the transfer in the register and certify such transfer on the securities certificates or issue new certificates within the time as specified in the notification of the SEC Office unless such transfer is against the law or against the restrictions on transfer of the securities issuing company which has registered such restrictions with the SEC Office.

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

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

SECTION 55.⁵ The transfer of bearer debentures, bearer certificates representing the rights to purchase shares or bearer certificates representing the rights to purchase debentures issued in accordance with Section 33 shall be valid upon delivery of such securities certificates to the transferee.

SECTION 55/1.⁵ The provisions of this Division and related penalty provisions shall apply to the register and transferability of any other securities as specified in the notification of the SEC under Section 33, *mutatis mutandis*.

In cases where the SEC deems appropriate for the characteristics of the securities, the SEC shall have the power to issue rules, conditions and procedures for register and transferability of securities under the first paragraph in a different manner from the provisions under this Division.

DIVISION 5

DISCLOSURE OF INFORMATION AND AUDITOR

SECTION 56.⁵ A securities issuing company in accordance with Section 32 or Section 33 shall prepare the following financial statements and reports concerning the financial condition and the business operation of the company and submit them to the SEC Office:

- (1) quarterly financial statement reviewed by an auditor;
- (2) financial statement for any accounting period examined and for which an opinion has been given by an auditor;
- (3) annual report;
- (4) any other reports concerning the information of the company as specified in the notification of the Capital Market Supervisory Board.

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

The Capital Market Supervisory Board may issue a notification to grant a waiver or an exemption of duty to prepare or submit the information under the first paragraph by taking into consideration the necessity of information for the decision making of investors.

SECTION 57.⁵ A securities issuing company in accordance with Section 32 or Section 33 shall submit a report with reasons to the SEC Office immediately when one of the following incidents occurs:

- (1) the company suffers serious damage;
- (2) the company ceases operating all or part of its business;
- (3) the company alters its objects or the nature of its business;

- (4) the company enters into an agreement entrusting other persons with power in whole or in part in the management of the company;
- (5) the company takes over another company or is taken over in accordance with Section 247;
- (6) any incident which affects or is likely to affect the rights and interests of securities holders or the decision-making on investment or the change in the securities price of the company as specified in the notification of the SEC Office.

SECTION 58.⁵ In cases where the SEC Office is of the opinion that the documents or reports furnished by the securities issuing company in accordance with Section 32 or Section 33 are incomplete or ambiguous, or in case of emergency or any other case which is likely to affect the rights and interests of securities holders or the decision-making on investment or change in the securities price of the company, the SEC Office shall have the power to do one or more of the following:

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

SECTION 59.⁵ A director, manager, person who holds management position as specified in the notification of the SEC Office and an auditor of the securities issuing company under Section 32 or Section 33 shall have the duty to prepare and disclose reports to the SEC Office on each person holding securities and derivatives and the changes to such holding as well as the holding and changes to the holding of their spouse, cohabiting couple and minor children in accordance with the rules and procedures as specified in the notification of the SEC Office.

The securities and derivatives under the first paragraph are:

- (1) securities of the securities issuing companies under Section 32 or Section 33, as specified in the notification of the SEC Office;
- (2) any securities which are issued by a third party who grants the securities holders the right to purchase, sell, acquire, or dispose of the securities under (1) or to receive returns that are dependent upon the price or returns of the securities under (1);
- (3) derivatives under the law on derivatives which requires delivery or derives its value from the price or returns of the securities under (1) or (2).

The reporting under the first paragraph shall include the holding of securities and derivatives, and the change to such holding, by a juristic person whose shares exceeding thirty percent of the total voting rights are held by the persons under the first paragraph, including the spouse or cohabiting couple, and minor children of such persons.

The provisions under the first paragraph shall apply to the interim executive, the plan preparer, the plan administrator and the interim plan administrator under the law on bankruptcy, of the securities issuing companies under Section 32 or Section 33, *mutatis mutandis*, and in cases where such persons are a juristic person, the duty under the first paragraph shall also apply to the director, manager and executive of such juristic person, as specified in the notification of the SEC Office.

SECTION 60.⁴ For the benefit of disclosing information to the public about the condition and the business operation of a securities issuing company including the holding of securities in such company, the SEC Office shall have the power to disclose the reports or the information received in accordance with Section 56, Section 57, Section 58 and Section 59 under the rules and procedures as specified in the notification of the Capital Market Supervisory Board.

SECTION 61. The auditor as referred to in Section 56 shall be an auditor who has been given an approval by the SEC Office.

Where an approval has been given in accordance with the first paragraph, the auditor may audit the accounts of a securities company as referred to in Section 106, a company issuing securities listed in the Securities Exchange as referred to in Section 199, and a company whose securities are traded in an over-the-counter center as referred to in Section 217.

SECTION 62.⁵ In making a review or audit, if the auditor finds that a securities issuing company in accordance with Section 32 or Section 33 has inaccurately prepared a quarterly financial statement or financial statement for any accounting period, the auditor shall state his findings and disclose the facts material to the financial statement and notify such circumstances in his report on which he is to sign in order to give his opinion as well as report the matter to the SEC Office.

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

CHAPTER 3

PUBLIC OFFERING OF SECURITIES

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

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

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

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

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

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

SECTION 66.⁵ In cases where the offer for sale of securities to the public or any person in accordance with Section 65 required an approval from the SEC Office, the promoters of a public limited company, or a company may file the registration statement and draft prospectus together with the application for approval in accordance with Section 32 or Section 33 or may make such filing after the approval has been granted.

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

SECTION 67.⁴ Subject to the provisions of Section 68, a registration statement and draft prospectus shall be effective upon lapse of forty-five days after the receipt of such registration statement and prospectus by the SEC Office, except where the Capital Market Supervisory Board specifies an effective date before such period.

SECTION 68.⁵ In cases where the promoters of a public limited company, or a company has submitted the registration statement and draft prospectus with an application for approval of an offer to sell newly issued securities in accordance with Section 32 or Section 33, and the SEC Office has not yet given an approval after the lapse of the time specified in Section 67, such registration statement and draft prospectus shall become effective only when the approval has been granted to the promoters of such public limited company, or such company to make an offer for sale of the newly issued securities.

SECTION 69.⁴ A registration statement shall be in the form as specified in the notification of the Capital Market Supervisory Board and shall have the following details:

- (1) objective of the offer for sale of the securities to the public or any person;
- (2) name of the securities issuing company;
- (3) capital of the company;
- (4) amount and type of the securities offered for sale;
- (5) expected selling price per unit of securities;
- (6) nature of the business;
- (7) financial condition, business operation, and material information of the business;
- (8) management and major shareholders of the securities issuing company;
- (9) auditor, regularly contacted financial institutions, and legal advisor of the securities issuing company;
- (10) procedures for the subscription, underwriting and allocation of securities;
- (11) other information as specified in the notification of the Capital Market Supervisory Board.

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

SECTION 70.⁴ In addition to the information to be provided in accordance with Section 69, the registration statement for the sale of securities in the category of bills or debentures shall also contain the following information:

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

SECTION 71.⁴ In addition to the information to be provided in accordance with Section 69, the registration statement for the sale of certificates representing the rights to purchase shares, certificates representing the rights to purchase debentures, or certificates representing the rights to purchase investment units, shall also contain the following information:

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

SECTION 72. The draft prospectus shall be in the form as specified in the notification of the SEC Office and wherever there are corresponding particulars in the draft prospectus and the registration statement, the material facts stated therein shall be the same.

SECTION 73. In cases where the SEC Office is of the opinion that the statements or particulars in the registration statement and draft prospectus are incomplete, the SEC Office has the power to order the person who files the registration statement and draft prospectus to file additional information or amend the registration statement and draft prospectus. However, the SEC Office may not give such an order after the registration statement and draft prospectus have become effective in accordance with Section 67 or Section 68.

SECTION 74. Prior to the effective date of the registration statement and draft prospectus, the promoters of a public limited company, a company or owner of securities who wishes to amend the particulars or information in the registration statement and draft prospectus may submit an application for such amendment to the SEC Office. Where such amendment concerns material information, the SEC Office may deem the date of the receipt of such amendment to be the commencement date of the period of time required under Section 67 for the filing of the new registration statement or the draft prospectus.

In cases where the SEC Office is of the opinion that the amendment as referred to in the first paragraph shall affect the interests of investors, the SEC Office has the power to order the promoters of a public limited company, a company or owner of securities to file additional documents or information.

SECTION 75. In calculating the period of time in accordance with Section 67, the period from issuance by the SEC Office of an order under Section 73 or under the second paragraph of Section 74, until receipt by the SEC Office of the complete documents or information shall not be taken into calculation.

SECTION 76. After the date on which the registration statement and draft prospectus have become effective, the SEC Office shall have the following powers:

- (1)⁵ in cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus are false or fail to disclose material facts that should have been stated therein which may cause damage to the purchasers of securities, the SEC Office has the power to order the suspension of the effectiveness of the registration statement and draft prospectus, and in cases where the offer for sale of securities is given an approval in accordance with Section 32 or Section 33, the SEC Office has the power to order the withdrawal of such approval immediately;
- (2) in cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus contain material facts which are incorrect, or there is an event which causes a material change in the information contained in the registration statement and draft prospectus which may affect the investment-making decisions of the purchasers of securities, the SEC Office has the power to order the temporary suspension of the effectiveness of the registration statement and draft prospectus until a course of action has been taken to make a correction and other action is taken as specified by the SEC Office in order to make public the amendment of such information;
- (3) in cases where the SEC Office finds that the statements or particulars in the registration statement and prospectus are incorrect in other aspects, the SEC Office has the power to order the promoters of a public limited company, a company or owner of securities who files the said documents to make corrections.

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

SECTION 77. When the promoters of a public limited company, a company or owner of securities has filed the registration statement or draft prospectus, distribution of the information relating to the offer for sale of securities may be made prior to effective date of such registration statement and draft prospectus. However, the information so distributed must contain material facts as specified in a notification of the SEC Office, as well as a clear statement showing that such distribution of information is not a prospectus, provided that it shall be in accordance with the rules and procedures as specified in the notification of the SEC Office.

SECTION 78. Any person who wishes to examine or obtain a copy of a registration statement and draft prospectus filed with the SEC Office may do so in accordance with the regulations as specified in the notification of the SEC Office.

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

SECTION 80.⁴ Advertisement and invitation to the public or any other person to purchase securities by the promoters of a public limited company, a company or owner of securities which do not follow the procedure as referred to in Section 79 can be made only when the registration statement and draft prospectus have become effective in accordance with Section 67 or Section 68 and shall not contain exaggerated, false or misleading statements. In cases where the advertisement is made by means of printed matter, it shall also contain the following details:

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

SECTION 81. After the completion of the sale of securities, the promoters of a public limited company, a company or owner of securities shall report the result of the sale to the SEC Office. In cases where an offering is made through an underwriter, the promoters of a public limited company, a company or owner of securities shall report the amount of securities and the amount of money paid for securities which have been purchased by the underwriter as well.

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

SECTION 82. In cases where the registration statement and prospectus contain false statements or particulars or fail to disclose material facts that should have been stated therein, any person who purchases securities from the promoters of a public limited company, a company or owner of securities, and such person is still the owner of such securities, who suffers damage from such purchase, shall have the right to claim compensation from the company or the owner of the securities.

The securities purchaser who has a right to claim compensation in accordance with the first paragraph must have purchased the securities before the facts under the first paragraph become apparent. However, the facts must become apparent within one year from the effective date of the registration statement and draft prospectus.

SECTION 83. The following persons shall be liable in accordance with Section 82 jointly with the company or the owner of securities unless such persons can prove that they are not aware of the facts or by their positions they could not have been aware of the truthfulness of the information or the failure to disclose the facts required to be stated:

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

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

- (1) the subscribers knew or should have known that the statements or particulars were false or that there was a failure to disclose material facts required to be stated therein;
- (2) damage did not arise from the result of the receipt of false information or the failure to disclose material facts required to be stated therein.

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

SECTION 86. The rights to claim for compensation in accordance with Section 82 shall have a limitation period of one year from the date on which the fact that the registration statement and prospectus contained false information became known or should have been known, but not exceeding two years from the effective date of the registration statement and draft prospectus.

SECTION 87. The effectiveness of the registration statement and draft prospectus shall not be taken to mean that the SEC and the SEC Office have certified the correctness of information contained in the registration statement and draft prospectus or that the SEC and the SEC Office have guaranteed the price of the securities being offered for sale.

SECTION 88.⁴ The company or the owner of the securities shall deliver securities to the purchasers of the securities in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

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

CHAPTER 3/1
GOVERNANCE OF PUBLICLY TRADED COMPANY⁴

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 center.

“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 the 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 an adopted minor child of the director, the executive or the person under (1);
- (3) a juristic person over which the person under (1) or (2) has control;
- (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 a 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 the voting rights of such juristic person;
- (2) having control of the majority voting rights in the shareholders’ meeting of any juristic person, whether directly or indirectly or by 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 securities issuing 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 gives assistance by any means to the SEC, the Capital Market Supervisory Board or the SEC 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 of 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 SEC 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 SEC Office.

DIVISION 1

DIRECTOR AND EXECUTIVE

SECTION 89/3. A director shall have qualifications and shall not have prohibited characteristics as specified by law on public limited companies, and 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 maintain his directorship in the company.

SECTION 89/5. All businesses of the company undertaken, on behalf of the company, by the board of directors, a director or any person assigned by the board of directors shall be valid and binding on the company notwithstanding it is subsequently found that there are certain defects 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 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

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 to be 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 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 that should be ordinarily obtained or causes damages to the company shall be presumed 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 of the rules 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 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 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 for 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 in 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 a 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 a meeting of the board of directors or a shareholders' meeting;
- (2) number 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 a director meeting, minute of the meeting of the board of directors and an annual report of the company;
 - (c) a notice calling a shareholder meeting and minutes of the 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 a substitute during such period.

The Chairman of the board of directors shall notify the SEC Office of the name of the company secretary within fourteen days from the date on which a person in charge of such position has been appointed and shall notify the SEC 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 of the board of directors and the Chairman of the 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 in such a way that constitute 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 an action for 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 in such a way that constitute 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. Directors and 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 the public which contains a false statement or concealing material facts which should have been stated in the following cases, unless such directors or executives can prove that, by his position, he could not have been aware of the truthfulness of information or 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 a 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 the 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 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 benefits that should have 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 assets or benefits of the company;
- (3) cases relevant to exploiting assets 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 directors and executives of the subsidiary.

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

SECTION 89/25. 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 facts relating to such circumstance to the audit committee of the securities company or the company in order to continue the inspection without delay and the audit committee shall report the result of preliminary inspection to the SEC 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 SEC Office.

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

DIVISION 3

SHAREHOLDER MEETINGS

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 for 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 date of the shareholders' meeting but not prior to date on which the board of directors has approved to call for the meeting. Once the board of directors determines the date on which the recorded shareholders have the right to attend the meeting, such date shall not 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 to 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 in the agenda of the upcoming shareholders' meeting. In the following cases, however, the board of directors may refuse to include such proposal in the agenda of the meeting:

- (1) the proposal does not comply with the 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 in the agenda of any shareholders' meeting, it shall be notified as the matter for information in that shareholders' meeting and the board of directors shall specify the reasons for 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 the shareholders present at the meeting and having the right to vote, to include the matter proposed by the shareholders under the first paragraph in the agenda of the meeting, the board of directors shall include such matter in 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 assets regardless of whether they are the assets 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 assets 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 assets in whole or in part regardless of whether such business or assets 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 a 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 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) number of votes 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.

CHAPTER 4

SECURITIES BUSINESS

DIVISION 1

FORMATION AND ISSUANCE OF LICENSE

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

[The second paragraph was repealed by the Securities and Exchange Act (No.4) B.E. 2551]

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

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

SECTION 91. Where it is necessary to maintain the economic and financial stability of the country, or to protect the public interest, the Minister upon recommendation of the SEC has the power to specify conditions with which the license holder shall be required to comply in the undertaking of the securities business.

In cases where there has been a change in the necessary circumstances as provided in the first paragraph, the Minister upon recommendation of the SEC may modify or change the conditions already specified.

SECTION 92.⁴ A securities company may establish a branch office only when an approval has been given by the SEC Office.

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

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

SECTION 93. Any person wishing to act on behalf of a company established to undertake securities business under foreign law by setting up a representative office in the Kingdom shall obtain an approval from the SEC Office.

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

The provisions of Section 95 shall not apply to a person receiving approval under this Section. However, such person shall comply with the regulations specified by the SEC Office.

DIVISION 2
SUPERVISION AND CONTROL

SECTION 94. A securities company shall include in its name the words "securities company" at the beginning and the word "limited" at the end.

SECTION 95. No person other than a securities company shall, in the undertaking of its business, use the name or a description of "securities company" or any other word of the same meaning.

SECTION 96.² The SEC may or may not require a securities company to have a paid-up registered capital in an amount specified for operation of any particular category of securities business, except for a security company operating securities business in the category of securities dealing or securities underwriting or operating securities business in any of the following manners, for which the SEC shall specify the paid-up registered capital of at least one hundred million baht:

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

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

SECTION 98.⁴ No securities company shall:

- (1) reduce its capital without an approval from the Capital Market Supervisory Board;
- (2) engage in any act which may mislead its customers or the public in any matter concerning the price, value and nature of the securities involved;
- (3) engage in any act which may cause damage or constitute an unfair advantage to its customers or other interested person as specified in the notification of the Capital Market Supervisory Board;
- (4) purchase and sell futures and options on securities whether in its own name or for customers unless the Capital Market Supervisory Board issues a notification allowing such transaction;
- (5) sell securities without having possession, or without receiving an order to sell from another person, unless the Capital Market Supervisory Board issues a notification allowing such transaction;
- (6) accept purchasing or selling orders from customers outside its head office or branch offices unless otherwise specified by the SEC Office;

- (7) purchase or hold shares, except:
- (a) those acquired in the course of securities dealing, securities underwriting, or other securities businesses as specified in the notification of the Capital Market Supervisory Board; or
 - (b) those acquired upon a permission from the SEC Office and in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board;
- (8) engage in any other business which is not a licensed securities business, except when an approval has been granted by the Capital Market Supervisory Board;

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

- (9) relocate its head office or branch offices without an approval from the SEC Office;
- (10) advertise its business, unless such advertisement is carried out in accordance with the rules, conditions and procedures as specified in the notification of the SEC Office.

SECTION 99. In cases where a question arises as to whether the securities company holds securities for its customers' or its own account or for the accounts of any customers, it shall be deemed that the securities certificates which are in the possession of the securities company at any time are held for the persons in the following order:

- (1) the securities company's customers shall take precedence over the holding for the securities company's own account;
- (2) the customer who placed a purchase order prior to another customer shall take precedence over that other customer whether or not the said securities are held as collateral for a loan granted by the securities company.

SECTION 100.⁴ The appointment of any person to be an agent or broker of a securities company shall require prior approval from the SEC Office.

Application for an approval and the granting of an approval shall be in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

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

SECTION 102.⁴ 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 103.⁴ No securities company shall appoint or allow any person with any of the following prohibited characteristics to be or to perform the duty of a director, a manager or a person with power of management, or an advisor:

- (1) being or having been a bankrupt;
- (2) having been imprisoned by the judgement of a court which is final for an offence related to property committed with dishonest intent;
- (3) having been a director, a manager or a person with power of management of a financial institution which had its license revoked, unless an exemption has been granted by the Capital Market Supervisory Board;
- (4)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;”
- (5) having been removed from a position of chairman, director or manager in accordance with Section 144 or Section 145 or in accordance with the provisions of other laws;
- (6) being a political official;
- (7) being a government official with responsibility to supervise securities companies, an officer of the Bank of Thailand or of the SEC Office, except in cases where:
 - (a) an appointment is made with the approval from the Capital Market Supervisory Board for the purpose of assisting in the operation of a securities company; or
 - (b) an appointment is made in accordance with Section 145;
 - (c) the securities company is a state enterprise under the law relating to budget procedures.
- (8) [Section 103(8) was repealed by the Securities and Exchange Act (No.4) B.E. 2551]
- (9) being a person not having educational qualification, work experience or other qualification as specified in the notification of the Capital Market Supervisory Board;
- (10) having other prohibited characteristics as specified in the notification of the Capital Market Supervisory Board.

SECTION 104. A securities company shall appoint directors or managers or enter into an agreement with other persons, giving the power, either in whole or in part, to manage the business of the securities company only with the approval from the SEC Office.

In cases where it later appears that the persons under the first paragraph have the prohibited characteristics as specified in Section 103, the SEC Office shall have the power to withdraw its approval and the securities company shall propose other persons for the approval from the SEC Office within fifteen days from the date of the withdrawal.

The provisions of Section 103 shall apply *mutatis mutandis* to the persons with whom the securities company enters into an agreement allowing such persons as well as those who work for such persons to have full or partial managing power in the securities company.

SECTION 105. A securities company shall prepare its accounts stating true and accurate business operation and financial condition, which must conform to the accounting standards as specified by a professional institution approved by relevant government authorities and in accordance with additional regulations specified in the notification of the SEC.

SECTION 106. A securities company shall prepare a balance sheet and a profit and loss account for each accounting period of six months in the form specified in the notification of the SEC Office. The balance sheet shall be examined and an opinion given thereon by an auditor approved by the SEC Office to be the auditor for such financial year. Such auditor shall not be a director, officer or employee of the securities company.

The securities company shall publish its balance sheet and profit and loss account prepared in accordance with the first paragraph for each accounting period of six months. Such publications shall be posted in a prominent place at the office of such securities company, published in at least one local daily newspaper, and one copy shall be submitted to the SEC Office.

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

SECTION 107. The auditor as referred to in Section 106 shall adhere to the ethical code of auditors, perform the audit work and declare his opinion according to the provisions of the law relating to auditors and additional provisions as specified in the notification of the SEC.

Where the auditor finds that the securities company has made false supporting documents and/or made incorrect recordings in the accounts, the auditor shall disclose the facts material to the accounts which affect the financial statement in the auditing report in which the auditor has to sign his name for the purpose of declaring his opinion.

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

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

SECTION 109.⁴ The SEC Office may require any securities company to submit any report or present any document for any period or from time to time as specified by the SEC Office and may also require an explanation to elaborate or clarify such reports or documents in accordance with the rules and required period as specified in the notification of the Capital Market Supervisory Board.

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

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

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

SECTION 111/1.⁴ When a securities company becomes 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 as 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 center, which the securities company has entered into for the benefit of the person in (1).

“asset deemed as 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.

DIVISION 3

SECURITIES BROKERAGE

SECTION 112.4 In operating the business of securities brokerage, a securities company shall enter into a written agreement with the customers who appoint it to act as securities broker. For the purpose of fairness to the parties, the Capital Market Supervisory Board may specify any particulars which are material to the agreement.

SECTION 113.4 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.

DIVISION 4

SECURITIES DEALING

SECTION 114.4 In operating the business of securities dealing, a securities company shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

DIVISION 5

INVESTMENT ADVISORY SERVICE

SECTION 115.4 In operating the business of investment advisory service, a securities company shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also specify fees or service charges which the securities company may charge its customers for performing investment advisory service.

DIVISION 6

SECURITIES UNDERWRITING

SECTION 116.4 In operating the business of securities underwriting, a securities company shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also specify fees or service charges which the securities company may charge its customers for the performing underwriting service.

DIVISION 7
MUTUAL FUND MANAGEMENT

SECTION 117.⁴ For the management of a mutual fund, a securities company may set up and manage a mutual fund only when its application to set up the mutual fund has been given an approval by the SEC Office in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

SECTION 118. In applying to set up a mutual fund in accordance with Section 117, a securities company shall also submit the following documents:

- (1) details of the mutual fund project as specified in the notification of the SEC Office;
- (2) draft commitment between the unitholders and the securities company;
- (3) draft agreement appointing the mutual fund supervisor.

SECTION 119.⁴ The commitment between the unitholders and the securities company shall contain at least the following material provisions:

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

SECTION 120. The commitment referred to in Section 119 and the agreement appointing a mutual fund supervisor shall not contain any unfair limitation of liabilities of the securities company and of the mutual fund supervisor towards the unitholders.

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

SECTION 121. A mutual fund supervisor shall be a commercial bank or a financial institution which has qualifications as specified in the notification of the SEC Office.

In issuing the notification in accordance with the first paragraph, the SEC Office shall specify the following important matters:

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

SECTION 122. When an approval has been given to a securities company to set up and manage a mutual fund in accordance with Section 117 and prior to offer for sale of investment units to the public, the securities company shall arrange for the appointment of a mutual fund supervisor.

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

The prospectus shall be in the form as specified in the notification of the SEC Office and wherever there are corresponding particulars in the prospectus and the details of the mutual fund project, the material facts stated therein shall be the same.

SECTION 124.⁴ Money received from the sale of investment units of each mutual fund project shall constitute a pool of assets which the securities company shall be required to register with the SEC Office as a mutual fund in accordance with the rules and procedures as specified in the notification of the Capital Market Supervisory Board.

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

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

SECTION 125.⁴ For the management of a mutual fund, a securities company shall proceed as follows:

- (1) manage the mutual fund strictly in accordance with the approved mutual fund project and the commitment made with the unitholders;
- (2) deposit the assets of the mutual fund into the custody of the mutual fund supervisor;
- (3) prepare correct and complete accounts of investments of the mutual fund;
- (4) prepare investment reports of the mutual fund for the mutual fund supervisor in accordance with the rules and procedures specified in the notification of the SEC Office;
- (5) prepare and maintain a unitholders register in accordance with the rules and procedures specified in the notification of the SEC Office with the approval from the Capital Market Supervisory Board;

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

SECTION 126. For the management of a mutual fund, a securities company shall be prohibited from:

- (1) engaging in any act which may create a conflict of interest with the unitholders as specified in the notification of the SEC Office;
- (2) investing in or holding shares of the securities company responsible for the management of that mutual fund;
- (3)⁵ [SECTION 126(3) was repealed by the Securities and Exchange Act (No.5) B.E. 2559]
- (4) investing in or holding securities of any company exceeding the ratio specified in the notification of the SEC Office; in this regard, the SEC Office may set a requirement in accordance with the type of securities or the type of business of such company;
- (5)³ borrowing in the name of the mutual fund or creating any encumbrances on the assets of the mutual fund, except entering into derivative or engaging in the transaction in accordance with the rules, conditions and procedures as specified in the notification of the SEC.

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

SECTION 126/1.⁵ For the management of a mutual fund, a securities company may invest in or holding the investment units of any other mutual fund which is managed by the same securities company only when it is clearly specified in the approved mutual fund project and the prospectus, and upon compliance with the rules, conditions and procedures as specified in the notification of the SEC Office.

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

- (1) ensure that the securities company strictly complies with the provisions of Section 125;
- (2) accept into custody assets of the mutual fund and separate them from other assets as well as ensure the disposition of the mutual fund in accordance with the mutual fund project;
- (3) prepare deposit and payment accounts of the assets of the mutual fund;
- (4) prepare a report to the SEC Office in the event that the securities company has done any act or omitted to do any act which has caused damage to the mutual fund or has not acted in accordance with Section 125;
- (5) file a legal action in court to cause the securities company to perform its duties or to claim compensation for damage from the securities company for the benefit of unitholders as a whole or when instructed by the SEC Office.

Expenses incurred from such legal action on behalf of the unitholders of any mutual fund shall be paid from the assets of that mutual fund.

SECTION 128. In cases where the securities company does any act or omits to do any act which causes damage to the mutual fund or fails to perform its duties in accordance with Section 125, the mutual fund supervisor shall prepare a detailed report concerning such matter and submit it to the SEC Office within five days from the date on which the mutual fund supervisor has knowledge of such event.

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

In cases where the securities company fails to comply with the order of the SEC Office given under the second paragraph, the SEC Office shall have the power to:

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

SECTION 129. For the management of a mutual fund, a securities company shall proceed in accordance with an approved mutual fund project.

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

In cases where the alteration or the modification is made through a resolution of the unitholders, the securities company shall submit a report thereof to the SEC Office within fifteen days from the date of the resolution.

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

SECTION 130.⁴ Upon dissolution of the mutual fund, the securities company shall appoint a liquidator to collect and distribute assets to the unitholders as well as to do all other acts as may be necessary for the completion of liquidation in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

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

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

SECTION 131. After the completion of the liquidation, the liquidator shall apply for registration of the dissolution of the fund with the SEC Office.

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

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

Expenses incurred from such legal action on behalf of the unitholders of any mutual fund shall be paid from the assets of that mutual fund.

DIVISION 8²

PRIVATE FUND MANAGEMENT

SECTION 133.⁴ The securities company shall manage a private fund with honesty and care to preserve the interests of the person who has authorized the management of the private fund, using knowledge and competence as a professional.

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

SECTION 134.⁴ In managing a private fund, the securities company shall provide a private fund manager with the approval of the SEC Office in accordance with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

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

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

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

SECTION 135.⁴ In the management of a private fund, the securities company shall arrange for the appointment of a custodian with an approval of the SEC Office in accordance with the rules, conditions and procedures specified in the notification of the Capital Market Supervisory Board.

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

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

SECTION 137. In accepting assets into custody, the custodian shall segregate the deposited assets from its own assets, and shall deal with the deposited assets in accordance with the rules, conditions and procedures specified in the notification of the SEC Office.

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

SECTION 138. All assets of the person authorizing the management of the private fund shall be in the name of the person authorizing such management and the name of the securities company as the representative, unless otherwise permitted by the SEC Office in accordance with the rules, conditions and procedures specified in the notification of the SEC Office.

SECTION 139. In managing a private fund, the securities company shall be prohibited from:

- (1) investing in any assets for the person authorizing the management of the private fund other than those agreed upon in the agreement authorizing the management of the private fund;
- (2) accepting fees or any service charges from the person authorizing the management of the private fund, except for fees or service charges specified at the rate and according to procedures in the agreement authorizing the management of the private fund;
- (3) purchasing or selling assets in its own name with the person authorizing the management of the private fund without giving prior notice;
- (4) making a representation to the person authorizing the management of the private fund that there will be a profit or return at a certain rate or promising that the loss shall not be more than the rate already specified, except for a representation or warranty given in accordance with the rules, conditions and procedures as specified by the notification of the SEC Office;
- (5) doing any other act that may cause a conflict of interest as specified in the notification of the SEC Office.

SECTION 140.⁴ The securities company shall prepare an account showing the financial condition of each private fund in the form specified in the notification of the SEC Office and shall keep the supporting documents which evidence the correctness of such account.

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

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

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

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

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

DIVISION 9

REVOCAION OF LICENSE AND DISSOLUTION OF SECURITIES COMPANY

SECTION 141.⁴ If the SEC Office finds that any securities company:

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

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

SECTION 142. Where there is evidence that the condition or operation of any securities company is such that damage may be caused to the public interest, the SEC Office shall have the power to order such securities company to rectify such condition or operation within the period of time specified by the SEC Office.

SECTION 143.⁴ In cases where the Capital Market Supervisory Board finds that the condition or operation of any securities company is such that serious damage may be caused to the public interest, the Capital Market Supervisory Board shall have the power to order such securities company to take measures to rectify its management or to take any other action within the period of time specified by the Capital Market Supervisory Board. In this regard, the Capital Market Supervisory Board may also specify any condition to be complied with by the securities company for the purpose of rectifying the condition or operation of the securities company.

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

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

SECTION 145.⁴ Where any securities company fails to remove such persons or removes but fails to appoint other persons in their places within thirty days from the date of removal, the SEC Office with the approval of the Capital Market Supervisory Board shall have the power to:

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

For the purpose of this Section, the order of the SEC Office issued under the first paragraph shall be deemed as a resolution of a shareholders' meeting in accordance with the Civil and Commercial Code or the law relating to public limited companies, as the case may be.

The persons so removed shall no longer be involved in or operate, directly or indirectly, any affair of that securities company, and shall give assistance and provide facts to the persons so appointed.

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

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

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

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

SECTION 149. In revoking a license of a securities company, the Minister shall communicate the order in writing to the securities company and shall post such order in a prominent place at the office of the securities company and shall publish the order in the Government Gazette and in at least one local daily newspaper.

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

SECTION 151. When any securities company has discontinued its operation or ceased operating securities businesses, the securities company shall complete the purchase, sale or exchange of securities, settlement and delivery of the outstanding securities within the period of time specified by the SEC Office.

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

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

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

CHAPTER 5

SECURITIES EXCHANGE

DIVISION 1

ESTABLISHMENT

SECTION 153. There shall be established a Securities Exchange referred to as the "Securities Exchange of Thailand" with the object of undertaking the securities exchange operations as follows, without the distribution of profits.

- (1) providing the service of being a center for trading of listed securities as well as providing the system and method for trading of securities in such center;
- (2) undertaking any businesses relating to the Securities Exchange, which are the rendering of services relating to listed securities by acting as a clearing house, securities depository center, securities registrar, the rendering of services on securities data or similar businesses;
- (3) undertaking any businesses other than (1) and (2) with the approval of the SEC.

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

SECTION 154. The Securities Exchange shall have the power to do any acts within the scope of its objects as referred to in Section 153. Such power shall include the power to:

- (1) acquire, own, hold any proprietary rights, possess, rent or lease, hire purchase, grant of hire purchase, transfer or accept transfer of the rights to lease or hire purchase, mortgage or accept mortgage, sell, or dispose by any other means movable or immovable properties;
- (2) borrow or lend money as well as make investment for profit.

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

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

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

SECTION 158. A securities company which acts as a broker or an agent for the trading of securities in the Securities Exchange must be a member of the Securities Exchange.

DIVISION 2

BOARD OF DIRECTORS OF THE SECURITIES EXCHANGE

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

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

The board of directors of the Securities Exchange shall elect a director, who is not the manager of the Securities Exchange, to be the chairman and may also elect another director of the Securities Exchange to be the vice-chairman.

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

- (1) having a Thai nationality;
- (2) not being or having been a bankrupt;
- (3) not having been imprisoned by the judgement of a court which is final unless the offence is related to an act of negligence or a petty offence;

- (4) not being a civil servant having a permanent position or salary, a political official or an officer or employee of any government organization or state enterprise or district office or an elected member of a district council or district administration;
- (5) not being a director who has been removed from the position by a resolution of the SEC.

SECTION 161. Directors of the Securities Exchange, except for the manager of the Securities Exchange, shall hold office for a term of two years. When one year of the first term of office has elapsed, two of the SEC-appointed directors and two of the member-elected directors shall be retired by means of drawing lots. Retirement from the office by means of drawing lots shall be deemed retirement upon expiration of the term of office.

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

SECTION 162. Apart from the expiration of the term of office, the office of the director of the Securities Exchange shall be vacated upon:

- (1) death;
- (2) resignation;
- (3) removal by resolution of the SEC;
- (4) lack of qualifications or possession of prohibited characteristics under Section 160.

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

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

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

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

SECTION 165. The manager of the Securities Exchange shall:

- (1) have qualifications and not possess the prohibited characteristics under Section 160;
- (2) be able to work full-time for the Securities Exchange.

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

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

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

SECTION 167. The manager of the Securities Exchange has the duty to manage the operation of the Securities Exchange in accordance with the policy and rules and regulations of the board of directors of the Securities Exchange and has authority over the officers and employees of the Securities Exchange.

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

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

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

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

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

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

- (1) rules, conditions and procedures concerning the acceptance and the withdrawal of listed securities;
- (2) rates for fees charged by brokers or agents in the trading of listed securities;

- (3) rules and procedures concerning membership of the Securities Exchange, election of the directors of the Securities Exchange in accordance with Section 159, the numbers, procedures for admission, qualifications, rights and duties, disciplines, punishment, meetings, as well as the transfer and termination of membership in the Securities Exchange;
- (4) determination of the admission fees for membership, subscription fees, deposits and other service charges payable by members to the Securities Exchange;
- (5) rules concerning additional requirements for accounting and auditing to the extent that such requirements are not contrary to the standards as specified by a professional institute approved by the relevant government authorities;
- (6) announcement of the names of the auditors who have been given an approval by the board of directors of the Securities Exchange to audit the accounts of the companies whose securities are listed in the Securities Exchange;
- (7) rules, conditions and procedures concerning the preparation of the register of the listed securities' holders, disclosure of the financial condition and the business operation of the companies whose securities are listed in the Securities Exchange;
- (8) rules, conditions and procedures concerning the preparation of agreements appointing a broker or agent for the trading of listed securities in the Securities Exchange for customers and securities companies which are not members;
- (9) rules, conditions and procedures concerning the trading of listed securities in the Securities Exchange, the permission for members to trade listed securities outside the Securities Exchange and the settlement and delivery of listed securities which are traded in the Securities Exchange;
- (10) rules, conditions and procedures concerning a temporary suspension of trading of listed securities in the Securities Exchange;
- (11) rules, conditions and procedures concerning the inspection of documentation and accounts of members;
- (12) daily trading hours and holidays for the trading of listed securities in the Securities Exchange;
- (13) rules, conditions and procedures concerning the preparation and the disclosure of reports on the holding of securities, and the determination of time for certifying the transfer of securities and issuing securities certificates;
- (14) placement, appointment, removal of officers and employees, disciplines and punishment for officers and employees of the Securities Exchange, as well as the petition for grievances and the rules and procedures for the operation of the Securities Exchange;
- (15) determination of positions, scales of salaries, wages and bonuses of officers and employees;

- (16) welfare and assistance to present and retiring officers and employees including their families;
- (17) any other matters necessary for the operation of the Securities Exchange.

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

SECTION 170/1.⁴ 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 171. The board of directors of the Securities Exchange shall have the power to:

- (1) accept as listed securities the securities which are qualified in accordance with the rules, conditions and procedures concerning the acceptance of listed securities under Section 170(1);
- (2) temporarily suspend the trading of any listed securities in the Securities Exchange for a specified period deemed as reasonable;
- (3) temporarily prohibit any member from trading listed securities in the Securities Exchange for a specified period deemed as reasonable;
- (4) withdraw the listed securities from the Securities Exchange in accordance with the rules, conditions and procedures concerning the withdrawal of listed securities under Section 170(1).

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

SECTION 172. In order that the operation of the Securities Exchange may proceed in an orderly manner and in order to protect the interests of investors, the board of directors of the Securities Exchange shall have the power to order a company whose securities are listed in the Securities Exchange to do any act or omit to do any act concerning any matter which is necessary and reasonable.

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

SECTION 173. In cases where the board of directors of the Securities Exchange has ordered a withdrawal of any listed securities due to the failure of the company to comply with the order given under Section 172, the holders of such withdrawn securities have the right to claim compensation from the director, manager or person responsible for the operation of such company who has caused the failure to comply with such order.

The holder of securities who has the right to claim compensation as referred to in the first paragraph shall have acquired such securities prior to withdrawal of such listed securities and shall neither have participated in nor given approval and permission to act against such order.

SECTION 174. The liability for compensation as referred to in Section 173 shall be equal to the reduction in the value of securities from the last selling price of such securities in the Securities Exchange.

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

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

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

SECTION 177. The chairman, vice-chairman and directors of the Securities Exchange shall receive remuneration as specified at a meeting of members of the Securities Exchange.

DIVISION 3

OPERATION

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

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

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

SECTION 180. The auditor shall have the power to examine all accounts and documents of the Securities Exchange and may require further explanation from the directors, manager, officers or employees of the Securities Exchange.

SECTION 181⁴ The board of directors of the Securities Exchange shall submit to the SEC Office a balance sheet with an annual income and expense account as well as prepare reports and submit documents to the SEC Office in accordance with the rules, conditions and procedures as specified by the Capital Market Supervisory Board.

SECTION 182. The Securities Exchange shall pay money for the purpose of facilitating the operation of the SEC Office at the rate specified by the SEC.

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

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

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

⁴For 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 a 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 185. No member of the Securities Exchange shall purchase or sell listed securities outside the Securities Exchange regardless of whether it is acting as a broker, agent or in its own name, unless such member has been given an approval from the Securities Exchange.

SECTION 186. In order to safeguard against the damage which may be caused to the public or the economy of the country, the SEC shall have the power to:

- (1) temporarily suspend the trading of all listed securities in the Securities Exchange for a specified period deemed as reasonable;
- (2) instruct the board of directors or the manager of the Securities Exchange to do any act or omit to do any act as the SEC deems appropriate.

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

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

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

DIVISION 4
LISTED SECURITIES

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

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

SECTION 190.⁴ 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 191. The company issuing securities which are listed in the Securities Exchange shall be required to keep a register of securities holders in accordance with the rules and procedures as specified by the board of directors of the Securities Exchange.

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

SECTION 192. In cases where shareholders who collectively hold not less than twenty-five percent of the total amount of shares sold in the company issuing securities which are listed in the Securities Exchange make a request to the Securities Exchange to act as securities registrar of the company, the Securities Exchange shall accept such request. In such case, the securities issuing company shall deliver relevant documents to the Securities Exchange within sixty days from the date on which the Securities Exchange has notified its acceptance to the securities issuing company and after the lapse of such period of time the securities issuing company can no longer act as the registrar.

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

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

SECTION 195.⁴ 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 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 196.⁴ 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.

The provision of the first paragraph shall apply to enforcement of listed securities pledged according to the Civil and Commercial Code *mutatis mutandis*.

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

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

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

SECTION 199.⁴ The provisions of Section 51, Section 52, Section 53 and Section 55 including related penalty provisions shall apply *mutatis mutandis* to the transfer and preparation of a listed securities register of the company issuing securities listed in the Securities Exchange which are not bills.

The provisions of Section 56, Section 57, Section 58, Section 59, Section 61 and Section 62 including related penalty provisions shall apply *mutatis mutandis* to the disclosure of information and to the auditor of the company issuing securities listed in the Securities Exchange which are not bonds issued by government organizations or state enterprises or any

other securities as specified by the board of directors of the Securities Exchange. In cases where such company has already prepared and submitted a report to the SEC Office concerning the disclosure of information in accordance with Section 56, the company may submit a copy of such report to the Securities Exchange.

In cases where the provisions referred to in the first and second paragraphs specify the powers and duties of the SEC Office or the Capital Market Supervisory Board, such provisions shall be deemed as the powers and duties of the Securities Exchange or the board of directors of the Securities Exchange, as the case may be.

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

DIVISION 5

SETTLEMENT OF DISPUTES CONCERNING SECURITIES TRANSACTIONS

SECTION 201. In cases where there are disputes concerning the purchase or sale of listed securities in the Securities Exchange either between members or between a member and its customers, the disputing parties may file an application for settlement by arbitrators to the Securities Exchange.

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

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

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

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

CHAPTER 6

OVER-THE-COUNTER CENTER AND FUTURES AND OPTIONS CENTER

DIVISION 1

OVER-THE-COUNTER CENTER

SECTION 204. An over-the-counter center may be established by not less than fifteen securities companies jointly applying for a license from the SEC for the purpose of trading securities which are not securities listed in the Securities Exchange.

SECTION 205. The application for a license to establish an over-the-counter center in accordance with Section 204 shall be submitted to the SEC and shall have the following particulars:

- (1) name of the over-the-counter center;
- (2) location of the office of the over-the-counter center;
- (3) name of the securities companies which are founder members;
- (4) capital and sources of capital for operation;
- (5) regulations of the over-the-counter center;
- (6) other details as specified in the notification of the SEC.

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

SECTION 206. The application for and the issuance of a license shall be in accordance with the rules, conditions and procedures specified in the notification of the SEC.

SECTION 207. The SEC shall have the power to determine a fee for a license for the establishment of an over-the-counter center.

SECTION 208. A licensed over-the-counter center shall be a juristic person.

SECTION 209. No person shall engage in the business of over-the-counter center or similar businesses unless a license has been obtained in accordance with this Division.

SECTION 210.⁴ After the establishment of an over-the-counter center in accordance with Section 204, there shall be a board of directors of the center comprising not more than nine members elected by the founder members.

The directors of the over-the-counter center shall elect the chairman, vice-chairman, manager of the over-the-counter center and other positions as deemed appropriate from among the directors referred to in the first paragraph.

Names and positions of the directors of the over-the-counter center shall be submitted to the Capital Market Supervisory Board without delay.

SECTION 211. In cases where alterations and modifications have been made to the regulations of the over-the-counter center applicable to members, the over-the-counter center shall report such alterations and modifications to the SEC without delay.

[SECTION 212 was repealed by the Securities and Exchange Act (No.4) B.E. 2551]

SECTION 213. The over-the-counter center shall ensure that members enter into a commitment to comply with the provisions of this Act, or rules and regulations of such over-the-counter center, or rules and regulations specified by the SEC. In cases where there has been a contravention of or non-compliance with such rules and regulations by a member, the over-the-counter center shall punish such member.

The punishment referred to in the first paragraph shall be:

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

SECTION 214. An over-the-counter center shall be dissolved in any of the following events:

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

The dissolution in accordance with (1) and (2) shall be effective when given an approval by the SEC.

SECTION 215. After the dissolution of an over-the-counter center, the remaining assets of the over-the-counter center shall be equally distributed among members, unless otherwise specified in the agreement establishing the over-the-counter center or the regulations applicable to members.

SECTION 216.⁴ The provisions of Section 91, Section 158, Section 160, Section 161, Section 162, Section 163, Section 170/1, Section 186, Section 190, Section 193, Section 194, and Section 197 including related penalty provisions shall apply *mutatis mutandis*.

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

In cases where the provisions referred to in the first paragraph specify the powers and duties of the Securities Exchange, the board of directors or the manager of the Securities Exchange, such provisions shall be deemed as the powers and duties of the over-the-counter center, the board of directors or the manager of the over-the-counter center, as the case may be.

DIVISION 2

FUTURES AND OPTIONS CENTER

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

CHAPTER 7

INSTITUTIONS RELATED TO SECURITIES BUSINESS

DIVISION 1

CLEARING HOUSE, SECURITIES DEPOSITORY CENTER

AND SECURITIES REGISTRAR

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

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

SECTION 220. No person shall operate the business of a securities depository center unless a license has been obtained from the SEC.

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

SECTION 221. No person shall provide securities registrar services unless a license has been obtained from the SEC.

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

SECTION 223.⁴ In the operation of a clearing house, a securities depository center or a securities registrar, persons operating such businesses shall comply with the rules, conditions and procedures as specified in the notification of the Capital Market Supervisory Board.

SECTION 223/1.⁴ 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 223/2.⁴ 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 223/3.⁴ 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 223/4.⁴ 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 223/5.⁴ 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 224. In cases where the operation of a clearing house, a securities depository center 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 223.⁴

The word "Securities Exchange" referred to in the first paragraph and further referred to in this Division shall include any company established by the Securities Exchange with not less than seventy-five percent of total shares sold held by the Securities Exchange.

SECTION 225. Where securities are deposited with the Securities Exchange, the depositor shall prepare a list of securities holders, whose securities have been deposited with the Securities Exchange, in accordance with the rules and procedures as specified by the Securities Exchange. After the Securities Exchange has accepted the deposit of such securities, the Securities Exchange may accept the transfer of such deposited securities into its own name and shall hold such securities for the depositor or for any customer who is the owner of such securities.

Securities which are in the name of the Securities Exchange in accordance with the first paragraph shall be presumed to be securities held by the Securities Exchange on behalf of those persons according to type, category and amount as appear in the list of names prepared by the depositor.

On the closing date of the register of the securities issuing company, the Securities Exchange shall collect the accounts of all deposited securities and the name lists of the holders of such securities, which existed on the date prior to first closing day, from the depositor of such securities and deliver them to the registrar of the securities issuing company. Such lists shall be deemed as a part of the securities register, except for the names of those persons to whom the registrar of the securities issuing company has notified objection within three business days from the receipt of such lists, on the ground that the holding of securities by such persons is contrary to the law or any restriction on transferability which have been registered in accordance with the law.

⁵In case of no closing date of the register, the provision of the third paragraph shall apply to the cases where the board of directors of the securities issuing company specifies the date when the shareholders have the right to attend the shareholders' meeting under Section 89/26 or the date when the shareholders have the right to receive dividends, the right to purchase or receive securities or newly issued shares, or the right to any other benefits under the law on public limited companies.

SECTION 226. Upon having submitted the application to register the transfer of securities certificates into the name of the Securities Exchange to hold securities on behalf of other persons in accordance with the first paragraph of Section 225 as well as the delivery of the securities certificates to the securities issuing company, the Securities Exchange may submit the request to the securities issuing company to provide a receipt in place of securities certificates. Such receipt shall have the particulars in the form specified by the Securities Exchange. In such event, it shall be deemed that securities certificates have been issued by the issuing company.

SECTION 227. Any securities owner who has deposited securities with the Securities Exchange may request the Securities Exchange to issue the securities certificates in his own name by submitting an application in accordance with the form specified by the Securities Exchange.

Upon receiving the application referred to in the first paragraph, the Securities Exchange shall notify the securities issuing company, of the name of the person who is the owner of such securities, and the securities issuing company so notified shall enter the name of the securities owner in the register of the company as well as issue new securities certificates, in the name of such securities owner.

In submitting the application referred to in the first paragraph, if the owner of the securities is a depositor who does not directly deposit such securities with the Securities Exchange, the owner of such securities shall apply through the depositor of such securities.

SECTION 228. The transfer of securities from the account of a securities depositor to the account of another securities depositor may be made only when the Securities Exchange has received a request from the securities depositor or when the clearing house of the Securities Exchange has notified the Securities Exchange, at the end of each trading day, of the delivery of the securities between members who have traded the securities in the Securities Exchange.

⁴The 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 228/1.⁴ 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 to the securities issuing company and the 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 on 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 228/2.⁴ The provisions of Section 225, Section 226, Section 227, Section 228 and Section 228/1 shall apply *mutatis mutandis* to the securities depository center which obtains license from the SEC, provided that, it shall be solely for the deposit of debt securities.

SECTION 229.⁴ In cases where the operation of a clearing house, a securities depository center 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 as 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.

DIVISION 2

ASSOCIATIONS RELATED TO SECURITIES BUSINESS

SECTION 230. Securities companies may jointly establish an association related to securities business with an object of promoting, without seeking profit or sharing income among themselves, securities business, only by virtue of the provisions of this Act.

SECTION 231. The establishment of an association related to securities business shall require a license from, and be registered with the SEC Office.

SECTION 232. In applying for a license and for registration, not less than fifteen securities companies who are the founders of the association shall submit the application to the SEC Office in accordance with the rules and procedures as specified in the notification of the SEC.

In considering the application for the establishment of an association related to securities business, the SEC Office shall have the power to issue a written order summoning any person to come forward for an enquiry or requiring the delivery of any documents.

SECTION 233. The licensed and registered association related to securities business shall be a juristic person.

SECTION 234. An association related to securities business shall have its regulations and such regulations shall at least contain the following particulars:

- (1) name;
- (2) object;
- (3) location of the office;
- (4) procedures for admission, rights and duties of members;
- (5) disciplines and punishment of members;
- (6) the operation of the association related to securities business, appointment and vacation of office as well as the meetings of directors including general meetings;
- (7) other regulations as specified in the notification of the SEC.

Regulations of an association shall be submitted for registration with the SEC Office together with the application for a license to establish an association related to securities business. Prior to the granting of a license, if the SEC Office deems appropriate, it may order the alteration and modification of the regulations.

SECTION 235. Members of an association related to securities business shall only be securities companies.

SECTION 236. The name of an association related to securities business shall be the name as appears in the regulations only, and the name shall not use the phrase "of Thailand" or any other phrases with similar meaning constituting the name of the association related to securities business.

The association related to securities business shall have a clearly stated name plate placed in front of its office.

SECTION 237. Relevant provisions in the law relating to trade associations concerning the operation, control, dissolution and the related penalty provisions shall apply *mutatis mutandis* to the extent that they are not contrary to or inconsistent with the provisions of this Division. In this regard, the word "SEC" shall be substituted for the word "Minister", the word "SEC Office" for the word "registrar", the words "association related to securities business" for the words "trade association" and the powers and duties of a competent official in accordance with the law relating to trade associations shall be the powers and duties of a competent official under this Act.

CHAPTER 8

UNFAIR SECURITIES TRADING PRACTICES AND THE ACQUISITION OF SECURITIES FOR BUSINESS TAKE-OVERS

DIVISION 1⁵

PREVENTION OF UNFAIR SECURITIES TRADING PRACTICES

SECTION 238. The provisions under this Division shall apply to listed securities and securities traded in the over-the-counter center.

SECTION 239. In this Division:

“executive” means executive under Section 89/1;

“control” means control under Section 89/1;

“derivatives” means derivatives under the law on derivatives;

“inside information” means information that has not been generally disclosed to the public and is material to the change of price or the value of securities;

“effect on the securities price” means the effect that causes securities price to rise, fall, be maintained, or stabilized.

SECTION 240. No person shall inform, disseminate, or certify any statement or information that is false or materially misleading about financial condition, business operation, the price of securities or any other information related to a securities issuing company in such a manner that is likely to have an effect on the price of securities or the decision making on securities investment.

SECTION 241. No person shall analyse or forecast the financial condition, the business operation, the price of securities or any other information related to a securities issuing company by using information known to be false or incomplete which may mislead materially the making of such analysis or forecast, or omit to consider the accuracy of such information, or by distorting the information used in the making of the analysis or the forecast, and disclosing or giving an opinion on the analysis or the forecast to the public in such a manner that is likely to have an effect on the price of securities or decision making on securities investment.

SECTION 242. No person who knows or possesses inside information related to a securities issuing company shall:

- (1) purchase or sell securities or enter into a derivatives contract related to securities, either for oneself or other persons, except in the following cases:
 - (a) action in compliance with the law, the court's order, or the order of an agency with the legal power;
 - (b) action in accordance with the obligations to a derivatives contract that has been made before one becomes aware of or possesses inside information related to the securities issuing company;
 - (c) action not agreed upon or decided by oneself but assigned to an approved or registered person under the law on management of capital or investment to make a securities trading decision or enter into a derivatives contract related to such securities; or
 - (d) action not having a characteristic of taking an advantage of other persons or any characteristic as specified in the notification of the SEC.
- (2) disclose inside information to other persons, either directly or indirectly and by any means, while one knows or ought reasonably to know that the receiver of such information may exploit such information for trading securities or entering into a derivatives contract related to such securities, either for the benefit of oneself or other persons, except when such action does not have the characteristics of taking an advantage of other persons or has the characteristics as specified in the notification of the SEC.

SECTION 243. It shall be presumed that the following persons have known or possessed the inside information under Section 242:

- (1) director, executive or controlling person of a securities issuing company;
- (2) employee or worker of a securities issuing company who holds a position, or is in the line of work, responsible for or capable of accessing inside information;
- (3) any person who is able to know inside information by performing duties as auditor, financial advisor, legal advisor, asset appraiser or any other person whose duties are related to inside information, including employees, workers or colleagues of the aforesaid persons who hold a position or is in the line of work involved in the performance of duties related to such inside information;
- (4) director, sub-committee member, representative of a juristic person, agent, worker, employee, advisor or operator in a governmental agency, the SEC Office, the Stock Exchange, the over-the-counter center or the Derivatives Exchange, who is in the position or the condition that can access inside information through performance of duties;
- (5) juristic person whose business is under control of the persons under (1) (2) (3) or (4).

SECTION 244. It shall be presumed that the following persons, who have traded securities or entered into a derivatives contract in a different manner from their normal practice, have known or possessed the inside information under Section 242:

- (1) holder of securities exceeding five percent of the securities issuing company's total securities sold, including the securities held by spouse or cohabiting couple and minor children of the securities holder;
- (2) director, executive, controlling person, employee, or worker of business in the group of the securities issuing company, who holds a position or the line of work responsible for or capable of accessing inside information;
- (3) ascendant, descendant, child adopter or adopted child of the persons under Section 243;
- (4) sibling of the same blood parents or sibling of the same blood father or mother of the persons under Section 243;
- (5) spouse or cohabiting couple of the persons under 243 or the persons under (3) or (4).

Business in the group of a securities issuing company under (2) means parent company, subsidiary or affiliate of the securities issuing company in accordance with the rules as specified in the notification of the SEC.

SECTION 244/1. No securities company that operates the business of securities brokerage including its officers or employees who know or possess information related to trading orders of securities or derivatives of any client of such securities company shall take any of the following actions, either for the benefit of oneself or other persons, in any manner that is likely to cause a disadvantage to the client:

- (1) placing, modifying, or cancelling a trading order of securities or derivatives related to such securities by taking advantage of doing so before completing the order of such client;
- (2) disclosing information related to the order of such client to another person even though it is known or ought reasonably to be known that such person would use such information for placing, modifying or cancelling trading orders of securities or derivatives related to such securities before the execution of the client's order is completed.

SECTION 244/2. The provisions under Section 244/1 shall apply to securities companies that operate the securities business of fund management as well as officers or employees of such securities companies who have known or possessed inside information related to trading orders of securities and derivatives of funds or any other entity that has the same characteristics as funds whose assets or investment are managed by such securities companies, *mutatis mutandis*.

SECTION 244/3. No person shall take any of the following actions:

- (1) placing a trading order or trading securities in such a way that misleads other persons regarding the price or volume of the securities trading;
- (2) placing a securities trading order or trading securities on a continued basis with an intent to cause the price or the volume of such securities trading to be inconsistent with the normal market condition.

SECTION 244/4. The provisions under Section 244/3 shall not apply to the following cases:

- (1) trading of securities for price stabilization under the underwriting agreement with the securities issuing company and in compliance with the regulations issued by the Capital Market Supervisory Board under this Act;
- (2) repurchasing of shares or selling of the repurchased shares in the share repurchase project in accordance with the regulations issued by the board of directors of the Securities Exchange under this Act;
- (3) purchasing or selling of securities in accordance with the rules, conditions and procedures as specified in the notification of the SEC.

SECTION 244/5. Any of the following acts shall be presumed to be an act that has caused other persons to have a misunderstanding of the price or volume of the securities trading under Section 244/3 (1), or an act that has caused the price or volume of such securities trading to be inconsistent with the normal market condition under Section 244/3 (2), as the case may be:

- (1) purchasing or selling securities in such a way that does not involve a change of beneficial ownership of such securities;
- (2) placing a securities purchasing order while being aware that oneself or an associate has made an order to sell the same securities or will do so at a similar amount and a similar price within a similar period of time;
- (3) placing a securities selling order while being aware that oneself or an associate has made an order to buy the same securities or will do so at a similar amount and a similar price within a similar period of time;
- (4) placing, modifying, or cancelling a securities trading order during the pre-opening or pre-closing period of the Stock Exchange or the over-the-counter center, as the case may be, with an intent to cause the opening or closing price of such securities to be higher or lower than it should have been;
- (5) placing, modifying, or cancelling a securities trading order in such a way that obstructs securities trading of other persons, which causes other persons to place a trading order at a higher or lower price than it should have been.

SECTION 244/6. It shall be presumed that a person who has committed any of the following acts is the principal for committing the offenses under Section 244/3:

- (1) opening a joint bank account for making a payment or receiving a payment related to or because of a securities trading;
- (2) allowing any person to seek benefits by using one's own bank account for making payments or receiving payments related to or because of securities trading;
- (3) allowing any person to use one's own securities trading account;

- (4) making a payment or receiving a payment for a securities trading for any person;
- (5) placing money or other assets as collateral for securities trading of any person;
- (6) allowing any person to receive benefits or oversee payments related to or because of one's own securities trading; or
- (7) transferring or receiving a transfer of securities between each other.

SECTION 244/7. No person shall place, modify or cancel a securities trading order through the securities trading system of the Stock Exchange or the over-the-counter center even though it is known or ought reasonably to be known that such act is likely to cause the price or volume of the securities trading to be inconsistent with the normal market condition and cause the securities trading system to delay or discontinue.

DIVISION 2

ACQUISITION OF SECURITIES FOR BUSINESS TAKE-OVERS

SECTION 245. In this Division:

"securities" means shares, or certificates representing the rights to purchase shares or other securities which may be converted into shares.

"business"⁴ means a company whose securities are listed in the Securities Exchange or traded in an over-the-counter center, or a public limited company having characteristics as specified in the notification of the Capital Market Supervisory Board.

SECTION 246.⁴ 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 SEC Office each time such an acquisition or disposition has been made, provided that calculation of voting rights 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 the 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 as 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 SEC Office and shall become effective after the lapse of time specified in the notification of the Capital Market Supervisory Board.

SECTION 248.⁴ The person making a tender offer to purchase securities shall announce or notify the offer to purchase securities in accordance with the rules and procedures specified in the notification of the Capital Market Supervisory Board.

SECTION 249. Upon filing of the tender offer to purchase securities with the SEC Office, the person making the tender offer shall immediately deliver a copy of the tender offer to the business from which he offers to purchase securities.

SECTION 250.⁴ Upon receipt of a tender offer to purchase securities in accordance with Section 249, such business shall prepare an opinion concerning the tender offer in the form specified by the SEC and shall submit such opinion to the SEC 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 250/1.⁴ 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 251. No person making a tender offer to purchase securities shall purchase the securities of the business prior to effectiveness of the tender offer which has been filed with the SEC Office and prior to having complied with Section 248.

From the effective date of the tender offer until the date after the time specified in the tender offer for the purchase of securities, no person making the tender offer shall purchase such securities by any means other than those specified in the tender offer.

SECTION 252.⁴ After the expiry of the period specified in the tender offer to purchase securities, if the amount of securities being offered for sale by the securities holders is in excess of the amount of securities specified in the tender offer, the person making the tender offer shall purchase all of such securities, only in the following cases:

- (1) such securities are listed securities or traded in an over-the-counter center and the person making the tender offer has the intention to withdraw such securities from being listed securities in the Securities Exchange or being traded in the over-the-counter center;
- (2) the person making the tender offer has the intention to change the main object of the business;
- (3) the person making the tender offer has the intention to become the holder of securities of that business in an amount of not less than seventy-five percent of the total securities sold;

- (4) other cases as specified in the notification of the Capital Market Supervisory Board.

The person making the tender offer shall make payment for securities to the seller of securities immediately upon delivery of securities, and in case such securities are listed securities, it shall be deemed as a purchase and sale in the Securities Exchange.

SECTION 253. In cases where the amount of securities being offered for sale by securities holders at a certain price specified by the person making the tender offer is less than the amount specified in the tender offer and the person making such tender offer wishes to purchase up to the required amount, the person making such tender offer may offer a higher price for the purchase of securities. In such case, the person making the tender offer shall make an additional payment for the difference in price to the holders of securities who have previously made the offer for sale.

SECTION 254. In cases where the person making the tender offer to purchase securities for the purpose of taking over a business intends to withdraw such securities from being listed securities or from being traded in an over-the-counter center, the person making such tender offer shall clearly state his intention in the tender offer.

SECTION 255.⁴ Regardless of whether the take over of a business has succeeded or not, a person who has previously made a tender offer to purchase securities for the purpose of taking over such business shall be able to make another tender offer for the purpose of taking over the business only after a period of one year from the date after the time specified in the previous tender offer for the purchase of securities, unless otherwise permitted by the Capital Market Supervisory Board.

SECTION 256.⁴ The person making the tender offer who has already purchased the securities shall report the result of such purchase to the SEC Office within the time specified by the Capital Market Supervisory Board.

The report under the first paragraph shall be in accordance with the rules and procedures as specified in the notification of the Capital Market Supervisory Board.

SECTION 257. The SEC Office shall keep the information concerning a tender offer to purchase securities and make it available for inspection by the public for a period of one year from the effective date of the tender offer.

SECTION 258.⁴ 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 rights 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 259. In cases where there is any doubt whether the holding of securities is of the characteristics which may be counted as held by the same person in accordance with Section 258, the SEC Office shall inform such person to give an explanation or proceed to rectify such holding of securities. If such person fails to give an explanation or fails to rectify the situation within the time specified by the SEC Office, the holding of such securities shall be deemed to fall within the characteristics specified in Section 258.

[CHAPTER 9 APPELLATE COMMITTEE, SECTION 260 and SECTION 261 were repealed by the Securities and Exchange Act (No.4) B.E. 2551]

CHAPTER 10

SUPERVISION AND CONTROL

SECTION 262. The Minister shall have the powers and duties of overall supervision and control for implementation in accordance with the provisions of this Act and for harmonization with the policies of the Government or the resolutions of the Cabinet.

SECTION 262/1.⁴ The Minister shall have the power to order the SEC, the Capital Market Supervisory Board or the SEC Office to clarify any fact, give an opinion or prepare and submit report on the conditions of the capital market or the derivative market or the guideline for the supervision of the capital market or derivative market.

SECTION 263. All matters which are required to be submitted to the Cabinet in accordance with the provisions of this Act shall be submitted by the Minister.

CHAPTER 11

COMPETENT OFFICIAL

SECTION 264. in executing his duties, a competent official shall have the power to:

- (1) enter into the place of business or premises of a securities company, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar or the place where the data of such securities company or institution is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, in order to examine the operations, assets and liabilities of such securities company or institution, including documents, evidence or information concerning such securities company or institution;
- (2) enter into the place of business of a promoter of a public limited company, a securities issuing company or an owner of securities who offers for sale securities to the public or any person, or the place where the data of such person is collected or processed by computers or any other equipment, during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts or other related documents and evidence;
- (3) enter into a commercial bank, financial institution or any place during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents or evidence which may be related to the commission of offences under the provisions of this Act;
- (4) seize or attach documents, or evidence related to the commission of offences under the provisions of this Act for the purpose of inspection or taking legal action;
- (5) order a director, officer, employee or auditor of a securities company, mutual fund, mutual fund supervisor, custodian, the Securities Exchange, over-the-counter center, clearing house, securities depository center, securities registrar and persons who collect or process the data of such securities company or institution by computers or any other equipment, to testify or to deliver copies of or present accounts, documents, seals or other evidence related to the businesses, operations, assets and liabilities of such securities company or institution;
- (6) order any person who purchases or sells securities with or through a securities company or member of the Securities Exchange or over-the-counter center to testify or deliver copies of or present accounts, documents and other evidence related to the purchase or sale of securities;
- (7) order any person who may be of use in executing duties of the competent official to testify or deliver copies of or present accounts, documents, evidence or any objects related to or necessary for the execution of the duties of the competent official;

- (8) enter into a place of business to inspect the condition or the operations of any debtor of any securities company during the hours between sunrise and sunset or during the business hours of such place.

In executing duties of the competent official under the first paragraph, the persons concerned shall give reasonable assistance.

After having entered and inspected in accordance with (1), (2), (3) or (8), if the inspection has not been completed, the competent official may continue the inspection into the night or beyond the business hours of such places.

The exercise of powers of the competent official in accordance with (6), (7) and (8) shall be carried out against the person who is directly involved in the matter under inspection and shall require prior approval from the SEC Office and in the case of (6) and (7), the competent official shall specify a reasonable period for such person to comply with the order.

SECTION 264/1.⁴ Upon request of a foreign authority with the power under respective foreign law on securities and exchange or other laws of similar nature, the SEC 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 SEC Office upon request.

⁵For the purpose of this Section, the provision under Section 264 and the relevant penal provisions shall apply.

SECTION 264/2.⁵ Any evidence that has been received through the cooperation between international agencies and the SEC Office may be used in any legal proceeding.

SECTION 265. In executing his duties, the competent official shall present his identification card to the persons involved.

The identification card of the competent official shall be in the form specified in the ministerial regulations.

SECTION 266. In executing his duties in accordance with this Act, the competent official shall be an official under the Criminal Code.

SECTION 266/1.⁵ An inquiry official may use the information, facts, documents and any evidence that the SEC Office has submitted with the filing of complaint against the offender as part of the criminal investigation.

SECTION 267. In cases where there is evidence that any person has committed an offence under this Act which may cause damage to the interests of the public and the SEC Office has reasonable grounds to believe that the wrongdoer would remove or dispose of his properties, the SEC Office with the approval of the SEC shall have the power to order seizure or attachment of such person's properties or the properties for which there is reasonable evidence to believe that they belong to such person. However, the period of seizure or attachment may not exceed one hundred and eighty days unless an action is brought in court, and such seizure or attachment order shall still be effective until court orders otherwise. Where circumstances render it impossible to bring the case into court within one hundred and eighty days, the court having jurisdiction may extend the period of seizure or attachment as requested by the SEC Office, but may not extend the period beyond another one hundred and eighty days.

The SEC Office shall have the power to authorize the competent official to proceed with the seizure or attachment of the properties under the first paragraph.

The provisions of the Revenue Code shall apply to the seizure or attachment of the properties under the first paragraph *mutatis mutandis*.

In a case under the first paragraph, where there are reasonable grounds to suspect that such person will abscond from the Kingdom, upon request by the SEC Office, the Criminal Court shall have the power to prohibit such person from leaving the Kingdom, and in the case of extreme urgency, the SEC shall prohibit such person from leaving the Kingdom on a temporary basis for a period not exceeding fifteen days until the Criminal Court orders otherwise.

CHAPTER 12⁵

CRIMINAL PENALTIES

SECTION 267/1.⁴ 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 268. Any person who contravenes Section 32, Section 33 or Section 34 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht, or both.

SECTION 268/1.⁵ Any person under Section 33/1 who fails to comply with the regulations issued under the second paragraph of Section 33/1 regarding duties and responsibilities to disclosure of information or post-approval duties in the same way as securities issuing companies shall be liable to the penalties specified for such offence, and in case of a compounding offence, such person shall be subject to compounding for the offence as well.

SECTION 268/2.⁵ Any person under Section 33/2 who contravenes or fails to comply with the regulations specified by the SEC under Section 33/2, which require performance of duties and responsibilities to disclosure of information in collaboration with the securities issuing company shall be liable to the penalties as specified for such offence, and in case of a compounding offence, such person shall be subject to compounding for the offence as well.

SECTION 269.⁵ Any person who contravenes or fails to comply with the third paragraph of Section 33/1, Section 35 or Section 35/1 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 270. Any debenture issuer who issues debentures the particulars of which do not comply with Section 40 or who fails to comply with the second paragraph of Section 41 or who makes terms and conditions or agreements which lack the material particulars as specified in accordance with Section 42 or Section 43 shall be liable to a fine not exceeding two hundred thousand baht.

SECTION 271. Any debenture issuer who fails to comply with Section 44 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 272. Any debenture holder representative who contravenes or fails to comply with the rules, conditions or procedures issued in accordance with Section 46 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 273.⁵ Any company which contravenes or fails to comply with Section 50, Section 53, Section 191, Section 192 or Section 193, or contravenes or fails to comply with the rules, conditions or procedures under Section 50, the second paragraph of Section 55/1 or Section 191 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

SECTION 274. Any company which contravenes or fails to comply with Section 56, Section 57 or Section 58(1) or (3) shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

Any director, manager, or person with power of management of any company who fails to provide an explanation in accordance with Section 58(2) shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand baht, or both.

SECTION 275.⁵ Any person who has the duty to prepare and disclose the reports under Section 59 contravenes or fails to comply with Section 59 or the rules or procedures as prescribed thereunder 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 276. Any person who offers for sale or sells securities to the public or to any person without having filed the registration statement and draft prospectus with the SEC Office in accordance with Section 65 or during the period for which the SEC Office orders the suspension of the effectiveness of the registration statement and draft prospectus in accordance with Section 76 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht, or both.

SECTION 277. Any person who offers for sale or sells securities to the public or to any persons prior to effectiveness of the registration statement and draft prospectus which have been filed with the SEC Office in accordance with Section 65 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one times the price at which all securities were offered for sale by such person but not less than three hundred thousand baht, or both.

SECTION 278. Any person who makes a false statement or conceals a fact which should have been stated in the registration statement or draft prospectus which has been filed in accordance with Section 65, in materiality, shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding two times the price at which all securities were offered for sale by such person but not less than five hundred thousand baht.

SECTION 279. Any person who contravenes or fails to comply with the second paragraph of Section 64, the second paragraph of Section 66 or the first paragraph of Section 81, or contravenes or fails to comply with the rules or procedures issued in accordance with the second paragraph of Section 81 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

SECTION 280. Any person who contravenes or fails to comply with Section 77, Section 79 or Section 80 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

SECTION 281. Any person who contravenes or fails to comply with Section 88 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 281/1.⁴ 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.

⁵In cases where any securities company or any company commits an offence under this Section and such offence is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager or any person responsible for the operation of the securities company or the company, such person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

SECTION 281/2.⁴ 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 with dishonest intent, he shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding two times the damages incurred or the benefit obtained but not less than one million baht, or both.

SECTION 281/3.⁴ 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 281/4.⁵ Any board of directors of any company which fails to comply with the first or 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.

Any chairman of any company who fails to comply with the third 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 281/5.⁴ 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 281/6.⁴ 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 281/7.⁴ 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 with dishonest intent, he 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 281/8.⁴ Any auditor or audit committee of any securities company or company who contravenes or fails to comply with Section 89/25 shall be liable to a fine not exceeding one hundred thousand baht.

SECTION 281/9.⁴ Any person who fails to comply with Section 89/31 shall be liable to a fine not exceeding three hundred thousand baht.

SECTION 281/10.⁵ Any person who has the duty to submit or disclose the following documents or information and makes a false statement or conceals material facts that 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:

- (1) any document or information submitted to the SEC Office or the Stock Exchange, as the case may be, under Section 56, Section 57, Section 58 or Section 199;
- (2) any document or information submitted or disclosed to the shareholders or the public in accordance with the provisions under Chapter 3/1: Governance of Publicly Traded Company;
- (3) any document or information submitted or disclosed to the SEC Office or the shareholders, as the case may be, in accordance with Section 246, Section 247, Section 248 or Section 250.

SECTION 282.⁵ Any securities company which contravenes or fails to comply with Section 92, Section 94, Section 96, Section 97, Section 98, Section 100, Section 101, Section 102, Section 103, Section 104, Section 105, Section 106, Section 108, Section 109, Section 110, Section 112, Section 113, Section 114, Section 115, Section 116, Section 117, Section 122, Section 123, Section 124, Section 125, Section 126, Section 126/1, Section 129, Section 130, the first paragraph of Section 134, Section 135, Section 136, Section 139 (1) (2) (3) or (4), the first paragraph, the second paragraph or the third paragraph of Section 140, Section 151 or the first paragraph of Section 195, or contravenes or fails to comply with the rules, conditions or procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 92, Section 98 (7) or (10), the second paragraph of Section 100, Section 117, Section 126/1, Section 135, Section 139 (4), the second paragraph of Section 140, Section 141, Section 142, Section 143, Section 144 or Section 150 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 283.⁵ 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, the second paragraph or the third paragraph of Section 140, Section 151 or the first paragraph of Section 195, or contravenes or fails to comply with the rules, conditions, procedures or orders issued in accordance with Section 92, Section 117, Section 135 or Section 150, if such offence of the securities company is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding two hundred thousand baht, or both.

In cases where any securities company commits an offence under Section 97, Section 98, Section 112, Section 122, Section 124, Section 125, Section 126, Section 126/1, the first paragraph of Section 134, Section 136 or Section 139 (1) (2) (3) or (4), or contravenes or fails to comply with the rules, conditions, procedures or orders issued in accordance with the fourth paragraph of Section 90, Section 91, Section 98 (7) or (10), Section 126/1, Section 139 (4), Section 141, Section 142, Section 143 or Section 144, if such offence of the securities company is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

SECTION 284. Any mutual fund supervisor who neglects or fails to perform his duty in accordance with Section 127 or the first paragraph of Section 128 shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 285. Any auditor who contravenes or fails to comply with Section 130 or Section 131 shall be liable to imprisonment for a term not exceeding three months or a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues, or both.

SECTION 285 bis.² Any securities company which violates or fails to comply with the second paragraph of Section 133 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

If the commission of offence under the first paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable for a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation or failure continues.

⁵ In cases where any securities company commits an offence under the second paragraph of Section 133, if such offence of the securities company is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

If the commission of offence under the third paragraph is also a violation of the first paragraph of Section 133, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

SECTION 285 ter.² Any private fund manager who fails to comply with the rules, conditions and procedures specified in the notification under the third paragraph of Section 134 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

If the commission of offence under the first paragraph is also a violation of the second paragraph of Section 134, the wrongdoer shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

SECTION 286. Any custodian who contravenes or fails to comply with Section 137 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 286 bis.² Any securities company which violates or fails to comply with Section 138 or Section 139 (5) shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the violation continues.

⁵In cases where any securities company commits an offence under Section 138 or Section 139 (5), if such offence of the securities company is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager or any person responsible for the operation of such securities company, such person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

SECTION 287.⁵ Any auditor of a securities issuing company under Section 32 or Section 33, a securities company, a mutual fund, a private fund, or a company whose securities are listed in the Securities Exchange or traded in an over-the-counter center, who performs audit work in order to give his opinion on financial statements which does not comply with the provisions of the law relating to auditors or additional requirements as specified in the notification of the SEC or makes false reports or violates the first paragraph of Section 62 or Section 107 or the fourth paragraph or fifth paragraph of Section 140 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht, or both.

SECTION 288. Any person who contravenes or fails to comply with Section 93, Section 95 or Section 156 shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand baht to three hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

SECTION 289. Any person who undertakes securities business without having obtained a license from the Minister in accordance with Section 90 or contravenes Section 155, Section 209, Section 219, Section 220 or Section 221 shall be liable to imprisonment for a term of two to five years and a fine from two hundred thousand baht to five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 290.⁴ Any over-the-counter center 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 291. Any person who contravenes or fails to comply with orders issued in accordance with Section 186(2) shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

SECTION 292. Any person who operates a business of a clearing house, a securities depository center or a securities registrar who fails to operate in accordance with the rules, conditions or procedures issued in accordance with Section 223 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues, or both.

SECTION 293. Any association related to securities business which contravenes or fails to comply with Section 236 shall be liable to a fine not exceeding one hundred thousand baht and a further fine not exceeding three thousand baht for every day during which the contravention continues.

SECTION 294. Any securities companies which agree to promote securities business without seeking profit or sharing income among themselves, by not establishing as an association related to securities business in accordance with this Act shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

SECTION 295. Any person who fails to comply with the order of the SEC Office in accordance with the second paragraph of Section 232 shall be liable to a fine not exceeding one hundred thousand baht.

SECTION 296.⁵ Any person who contravenes Section 240, Section 241, Section 242, Section 244/1, Section 244/2 or Section 244/3 (1) shall be liable to imprisonment for a term not exceeding two years or a fine from five hundred thousand baht to two million baht, or both.

In cases where the person who contravenes Section 240 or Section 241 is a director, manager or any person responsible for the operation of a securities issuing company, such person shall be liable to imprisonment for a term not exceeding five years or a fine from one million baht to five million baht, or both.

SECTION 296/1.⁵ Any person who contravenes Section 244/3 (2) or Section 244/7 shall be liable to imprisonment for a term not exceeding five years or a fine from one million baht to five million baht, or both.

SECTION 296/2.⁵ In cases where an offence under Section 296 or Section 296/1 in the part concerning determination of fine penalties, if the offender has received or should have received a benefit from such offence, a fine not exceeding two times the benefit shall be imposed and in any case such fine shall not be less than the minimum amount as specified under Section 296 or Section 296/1, as the case may be.

SECTION 297.⁵ Any person who allows another person to use a securities trading account or a bank account for payment of securities trading to conceal the identity of the account user in such a way that may use such account to commit an unfair act regarding securities trading under Division 1: Prevention of Unfair Securities Trading Practices under Chapter 8: Unfair Securities Trading Practices and the Acquisition or Securities for Business Takeovers shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht, or both.

Any person who uses a securities trading account or a bank account of another person to commit an unfair act under the first paragraph shall be liable to the same penalties as well.

SECTION 297/1.⁵ In cases where a court views that a defendant has committed an offence under Section 278, the first paragraph of Section 281/2, Section 281/10, Section 296, Section 296/1 or Section 297, the court shall order the offender to act or omit to act accordingly, as deemed appropriate:

- (1) to pay a compensation at an equal amount to the benefit received or should have been received from such offence, which shall be remitted as public revenue;
- (2) to be suspended from trading in securities on the Stock Exchange or the over-the-counter center, or derivatives contracts on the Derivatives Exchange within a specified period which shall not exceed five years as from the date when the court's decision or order has been made;
- (3) to be barred from serving as a director or executive of a securities issuing company or a securities company within a specified period which shall not exceed ten years as from the date when the court's decision or order has been made;
- (4) to reimburse the investigative expenses incurred by the SEC Office.

If the offender fails to make the payment under (1) or the expenses under (4), the court shall have the authority to issue a writ of execution, in which case the Civil Procedure Code shall apply, *mutatis mutandis*, and it shall be deemed that the SEC Office is the judgement creditor.

SECTION 298. Any person who contravenes or fails to comply with Section 246, Section 247, Section 248, Section 249, Section 251, Section 252, Section 253, Section 254, Section 255 or Section 256 or contravenes or fails to comply with the conditions issued in accordance with Section 247 shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues, or both.

SECTION 299.⁴ 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 299/1.⁵ Any person who contravenes or fails to comply with a letter of consent which specifies civil sanctions in accordance with Section 317/4 (3) or (4) shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding three hundred thousand baht, or both.

SECTION 299/2.⁵ Any person who contravenes or fails to comply with the court's judgment or order which specifies a sanction in accordance with Section 297/1 (2) or (3) or Section 317/4 (3) or (4) shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding three hundred thousand baht, or both.

SECTION 299/3.⁵ Any securities company or derivatives business operator which provides services to the offender under Section 299/1 or Section 299/2 even though it is known or should have been known that a sanction has been specified under the letter of consent or the court's judgment or order shall be liable to a fine not exceeding three hundred thousand baht.

SECTION 300.⁵ Unless the liability of director, manager or any person responsible for the operation of a juristic person has been specified in this Act, if the offender under this Act is a juristic person and the offence thereof is the result of an order or an action of any person, or failure to order or act in accordance with the duties of director, manager or any person responsible for the operation of such juristic person, such offender shall be liable to the penalties specified for such offences as well.

[SECTION 301 was repealed by the Securities and Exchange Act (No.5) B.E. 2559]

SECTION 302.⁵ Any person who makes a statement or testifies with a false or concealing material facts which should have been notified to the competent official or the SEC Office shall be liable to imprisonment for a term not exceeding one year and a fine penalty not exceeding one hundred thousand baht.

SECTION 302/1.⁵ Any person who submits a copy or presents a bank account, a document or evidence which contains a false statement or a statement which is misleading about a material particular or conceals material facts that should have been presented to the competent official or the SEC Office shall be liable to imprisonment for a term not exceeding one year and a fine not exceeding one hundred thousand baht.

SECTION 303.⁵ Any person who contravenes the third paragraph of Section 145 or contravenes or fails to comply with the order or fails to facilitate the competent official in performing duties under Section 264 shall be liable to imprisonment for a term not exceeding one year and a fine not exceeding one hundred thousand baht.

SECTION 304. Any person who removes, damages, destroys or renders useless any seal or mark which the competent official has stamped or affixed on any object in the execution of his duty in accordance with Section 264 as evidence for the seizure, or attachment or the keeping of such object shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding three hundred thousand baht.

SECTION 305. Any person who damages, destroys, conceals, takes away, or loses or renders useless any property or document which the competent official has seized, attached, kept, or ordered to be delivered as evidence in accordance with Section 264, and regardless of whether or not the competent official would keep such property or document himself or would order such person or other persons to deliver or to keep it, shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand baht to three hundred thousand baht.

SECTION 306. Any director, manager, or person responsible for the operation of any juristic person under this Act, who dishonestly deceives the public by the assertion of a falsehood or the concealment of facts which should be revealed to the public, and by such deception, obtains property from the public or from a third person so deceived, or leads the public or third person so deceived to execute, revoke, or destroy a document of right, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

SECTION 307. Any director, manager, or person responsible for the operation of any juristic person under this Act, who is entrusted to manage the property of such juristic person, or property of which such juristic person is a co-owner, who dishonestly violates his duties by any means and causes damage to the usefulness in the nature as being a property of such juristic person, shall be liable to imprisonment for a term of five to ten years and a fine from five hundred thousand baht to one million baht.

SECTION 308. Any director, manager, or person responsible for the operation of any juristic person under this Act, who possesses property belonging to such juristic person, or of which such juristic person is a co-owner, and dishonestly converts such property to himself or a third party, shall be liable to imprisonment for a term of five to ten years and a fine from five hundred thousand baht to one million baht.

SECTION 309. Any director, manager, or person responsible for the operation of any juristic person under this Act, who takes away, damages, destroys, causes depreciation in value or renders useless any property which the juristic person has the duty to look after or which is in the possession of such juristic person, if it is committed in order to cause damage to other persons or the public, shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding five hundred thousand baht.

SECTION 310. Any director, manager, or person responsible for the operation of any juristic person under this Act, who knows that a creditor of such juristic person, or that a creditor of another person who is entitled to exercise his right as a creditor against such juristic person to enforce the payment of debt from such juristic person, uses or may use his right through the court to enforce payment:

- (1) removes, conceals or transfers to another person the property of such juristic person; or
- (2) maliciously creates a false debt for such juristic person;

If such action is done in order to prevent his creditor from receiving full or part payment, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

SECTION 311. Any director, manager, or person responsible for the operation of any juristic person under this Act, who acts or omits to act in order to obtain unlawful gains for himself or another person and causes damage to such juristic person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

SECTION 312. Any director, manager, or person responsible for the operation of any juristic person under this Act, who commits or permits another to act so as to:

- (1) damage, destroy, alter, abridge, or falsify accounts or documents or collateral of such juristic person or related to such juristic person;
- (2) make false entries or fail to enter any material statement in the accounts or documents of such juristic person or related to such juristic person; or
- (3) keep incomplete, incorrect, out-of-date, or inaccurate accounts.

If such action is done or permitted to be done to deceitfully deprive the juristic person or its shareholders of their rightful benefit or to deceive any person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand baht to one million baht.

SECTION 313. Any director, manager, or person responsible for the operation of a company or a juristic person whose securities are listed in the Securities Exchange or traded in any over-the-counter center, and who contravenes Section 307, Section 308, Section 309, or Section 311, shall be liable to imprisonment for a term of five to ten years and a fine of two times the price of the property or benefit which the person obtains through the contravention of such Sections, as the case may be, but such fine shall be not less than five hundred thousand baht.

SECTION 314.⁵ Any person who causes another person to commit an offence as specified under Section 287, Section 296, Section 296/1, Section 306, Section 307, Section 308, Section 309, Section 310, Section 311 or Section 312, either by using, ordering, threatening, hiring or any other means shall be liable to the penalties as specified for such offences.

SECTION 315.⁵ Any person who acts in such a way that renders assistance or facilitation for another person in committing an offence as specified under Section 287, Section 296, Section 296/1, Section 306, Section 307, Section 308, Section 309, Section 310, Section 311 or Section 312, whether before or during the commission of such offences shall be liable to the penalties as specified for such offences unless such person is unaware of the rendering of assistance or facilitation.

[SECTION 315/1 was repealed by the Securities and Exchange Act (No.5) B.E. 2559]

SECTION 316. Any person, in the performance of his duty under the powers and duties provided in accordance with this Act, having acquired confidential information of any person which, under normal circumstances, should not be disclosed, who discloses such information to another person, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht, or both.

The provisions of the first paragraph shall not apply to disclosure in the following cases:

- (1) disclosure in the performance of his duty;
- (2) disclosure for the purpose of investigation or trial;
- (3) disclosure relating to the commission of offences under this Act;
- (4) disclosure for the purpose of rectifying the condition or operation of a securities company;
- (5) disclosure to an auditor of any juristic person under this Act;
- (6) disclosure to the authorities or domestic and international agencies which are responsible for the supervision of securities, the Securities Exchange or the supervision and examination of financial institutions;
- (7) disclosure upon written consent of such person.

SECTION 316/1.⁵ The offences under this Chapter which are subject to fine penalties exclusively shall have a one-year prescription, starting from the date when the SEC Office has considered that an offence has been committed and the offender has been identified within a period not exceeding five years as from the date when such offence was committed.

SECTION 317.5 The 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, 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 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 298, Section 299 and Section 299/3 shall be subject to the criminal fining by the Criminal Fining Committee appointed by the Minister.

The Criminal Fining Committee appointed by the Minister under the first paragraph shall comprise three persons, one of whom shall be an inquiry official under the Criminal Procedure Code.

Where a case has been settled by the Criminal Fining Committee and the alleged offender has paid the fine as determined by the Criminal Fining Committee within the period of time specified by the Criminal Fining Committee, such case shall be regarded as settled.

CHAPTER 12/1⁵

CIVIL SANCTIONS

SECTION 317/1. The following offences shall be deemed the offences whereby civil sanctions may be imposed on the offenders:

- (1) committing unfair securities trading practice, which is an offence under Section 296 or Section 296/1;
- (2) presenting a false statement or concealing material facts that should have been stated, which is an offence under Section 278 or Section 281/10;
- (3) failing to perform duties as director or executive under Section 89/7, which is an offence under the first paragraph of Section 281/2;
- (4) allowing any person to use one's own securities trading account or bank account for payment of securities trading, or using the securities trading account or the bank account of any person, which is an offence under Section 297.

The enforcement of civil sanctions on the offenders under the first paragraph shall consider the severity of the offence, the impact on the capital market, the evidence that may be used for establishing the guilt, and the worthiness of imposing such sanctions.

SECTION 317/2. In case of filing a complaint or a denunciation with an inquiry official in a case related to the offences under Section 317/1, the inquiry official shall submit the case to the SEC Office within thirty days as from the filing date of the complaint or the denunciation for consideration of further action in accordance with the provisions under this Chapter, and in cases where the Civil Sanction Committee considers it is appropriate to impose a civil sanction, the SEC Office shall inform such matter to the inquiry official as well

SECTION 317/3. The Civil Sanction Committee shall be established, comprising the Attorney-General as Chairman, and the Permanent Secretary of the Ministry of Finance, the Director-General of the Department of Special Investigation, the Governor of the Bank of Thailand, and the Secretary-General as members.

The Secretary-General shall appoint an officer of the SEC Office as Secretary.

The members under the first paragraph may assign a subordinate to attend a meeting on their behalf.

The provisions under Section 12 and Section 13 shall apply to the meetings of the Civil Sanction Committee, *mutatis mutandis*.

The Civil Sanction Committee shall receive remuneration as specified by the SEC and such remuneration shall be deemed as expenses for the operation of the SEC Office.

SECTION 317/4. Civil sanctions shall be:

- (1) a civil penalty under Section 317/5;
- (2) a compensation at an equal amount to the benefit received or should have been received from committing an offence as specified under Section 317/1;
- (3) a suspension of trading in securities on the Stock Exchange or the over-the-counter center, or derivatives contracts on the Derivatives Exchange for a specified period not exceeding five years;
- (4) a bar from serving as a director or executive in a securities issuing company or a securities company within a specified period not exceeding ten years;
- (5) a reimbursement of investigative expenses incurred by the SEC Office.

SECTION 317/5. The civil penalties shall be specified as follows:

- (1) in case of Section 317/1 (1) or (2), a civil penalty shall be imposed at an amount not exceeding two times the benefit that such person received or should have received from committing such offence, but not less than five hundred thousand baht, and in cases where the benefit is incalculable, the civil penalty shall be imposed from five hundred thousand baht to two million baht;
- (2) in case of Section 317/1 (3) or (4), a civil penalty shall be imposed from fifty thousand baht to one million baht.

SECTION 317/6. In case of an offence that may be liable to the civil sanctions under Section 317/1, if the SEC Office considers it is appropriate to impose a civil sanction on the offender, the SEC Office shall submit the case to the Civil Sanction Committee for consideration whether to impose a civil sanction on the offender and how so. If the Civil Sanction Committee concludes that a civil sanction should not apply, a criminal proceeding shall then commence against the offender.

SECTION 317/7. In cases where the Civil Sanction Committee deems it is appropriate to impose a civil sanction on the offender and has specified the approach for enforcing the civil sanction as deemed appropriate, and the offender agrees to comply with the specified civil sanction, the SEC Office shall prepare a letter of consent and after the offender has made a payment in full, the right to institute a criminal prosecution shall extinguish.

In cases where the offender fails to make the payment according to the letter of consent, or fails to make the payment in full, the SEC Office shall file a petition with the court for enforcement according to the letter of consent within three years as from the date of default on payment.

SECTION 317/8. In cases where the offender refuses to extinguish the case under Section 317/7, the SEC Office shall bring an action against the offender in the court for consideration of a civil sanction against the offender, and in cases where the court orders the offender to make a payment under Section 317/4 (2) or (5), the interest thereof shall be accumulated as from the date of entry of the plaint until the payment is made in full.

After the court has passed a judgment or ordered a civil sanction, and the offender has made the payment in full, the right to institute criminal prosecution shall extinguish.

SECTION 317/9. After the court has given a judgment or order under the second paragraph of Section 317/7 or Section 317/8, the party has the right to appeal against such judgment or order, and the judgment or order of the Appeal Court shall be final.

SECTION 317/10. After the Civil Sanction Committee has considered a civil sanction or the court has given a judgment or order to impose a civil sanction under Section 317/4 (3) or (4), the SEC Office shall notify the securities companies, the securities issuing companies, the derivatives business operators, the Stock Exchange, the over-the-counter center, the Derivatives Exchange or the Department of Business Development, as involved and as the case may be, to act or omit to act in accordance with the letter of consent or the judgment or the order of the court.

SECTION 317/11. In cases where many persons jointly commit the offence as specified under Section 317/1, such individuals or juristic persons shall be liable in equal shares, except when circumstances allow consideration otherwise.

In cases where the offender as specified under Section 317/1 is a juristic person, if the commission of offence of juristic persons or each juristic person is a result of an order or an action of any person or a failure to order or act according to the duties of director, manager, or any person responsible for the operation of such juristic person, such person shall be liable to the civil sanctions under this Chapter and have joint and several liabilities with such juristic person

SECTION 317/12. The money paid by the offender under Section 317/4, from which the expenses under Section 317/4 (5) have been deducted and reimbursed to the SEC Office, shall be submitted as public revenue.

SECTION 317/13. The prescription for instituting a criminal prosecution shall apply to the legal proceeding for imposing a civil sanction on an offence that may be liable to the civil sanction under Section 317/1.

SECTION 317/14. The court's proceeding under this Chapter shall be submitted to the Civil Court, and the Civil Procedure Code shall apply to the procedure, the judgment and the execution, *mutatis mutandis*.

CHAPTER 13

TRANSITIONAL PROVISIONS

SECTION 318. In the first term for a period of four years from the date of the publication of this Act in the Government Gazette, Section 21(4) shall not apply to the tenure and vacancy of the office of the Secretary-General.

SECTION 319. The Ministry of Finance shall arrange for a transfer of the following funds to the SEC Office within thirty days from the date of the publication of this Act in the Government Gazette, to be the initial capital of the SEC Office in accordance with Section 25:

- (1) the remaining amount from the Fund for Solving Securities Business Problems in the amount of five hundred and five million six hundred forty-two thousand six hundred forty-four baht and sixty satang, with interest;
- (2) the remaining amount from the Capital Market Development Fund in the amount of two hundred million baht.

SECTION 320. The Bank of Thailand shall transfer money in the amount of five hundred million baht to the SEC Office within thirty days from the date of the publication of this Act in the Government Gazette, to be the initial capital of the SEC Office in accordance with Section 25.

SECTION 321. A securities company or securities and finance company, which has been granted a license to undertake any type of securities business under the law relating to the undertaking of finance business, securities business and credit foncier business on the date of this Act coming into force, shall be deemed as a company which has been granted a license to undertake securities business of such type under this Act.

The provisions of Section 94 shall not apply to the securities and finance company under the first paragraph.

SECTION 322. A securities company or securities and finance company as referred to in Section 321 which has paid-up registered capital of less than one hundred million baht shall proceed to:

- (1) raise its paid-up registered capital to not less than fifty million baht within one year from the date of this Act coming into force;
- (2) raise its paid-up registered capital to not less than one hundred million baht within two years from the date of this Act coming into force.

SECTION 323. A person acting on behalf of a company established to undertake securities business in accordance with foreign laws, and having a representative office in the Kingdom which has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business on the date of this Act coming into force, shall be deemed as a person acting on behalf of the securities company established in accordance with foreign laws which has been given an approval under Section 93 of this Act.

SECTION 324. A securities company which has been granted a license to undertake the business of investment management under the law relating to the undertaking of finance business, securities business and credit foncier business, shall continue to manage the approved investment project in accordance with such law until the expiration of the project. In this regard, such securities company shall comply with the rules and procedures as approved in accordance with such law. For this purpose, any matters specified to be the powers and duties of the Bank of Thailand, shall be the powers and duties of the SEC Office.

Prior to the expiration of the investment project, if the securities company referred to in the first paragraph wishes to convert the investment project into a mutual fund in accordance with this Act, such securities company shall comply with the rules, conditions and procedures as specified by the SEC. After such compliance, the provisions relating to mutual fund management under this Act shall apply *mutatis mutandis*.

SECTION 325. In cases where a securities company referred to in Section 321 which has been granted a license to undertake the business of mutual fund management has purchased or held shares for its own account and not for the account of the mutual fund project prior to date of this Act coming into force and which falls within the prohibition of Section 98(7) of this Act, the securities company shall have the right to continue to hold or possess such shares. However, if there is a disposition of such shares in any amount, the securities company shall have the right to continue to hold or possess the remaining amount of such shares only.

SECTION 326. A certified auditor of a securities company or a finance and securities company who has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business prior to date of this Act coming into force shall be deemed as an auditor of such securities company who has been given an approval under this Act.

SECTION 327. In cases where a company referred to in Section 321 which has had a director, manager, or person with power of management, or advisor who has been given an approval under the law relating to the undertaking of finance business, securities business and credit foncier business on the date of this Act coming into force, such person shall be deemed as a person who has been given an approval under this Act.

SECTION 328. All ministerial regulations, notifications of the Ministry of Finance or notifications of the Bank of Thailand concerning the undertaking of securities business which have been issued in accordance with the provisions of the law relating to the undertaking of finance business, securities business and credit foncier business which have been in force prior to date of this Act coming into force, shall remain in force until ministerial regulations, notifications, rules, regulations, or orders issued under this Act come into force.

Any matter which the ministerial regulations and notifications referred to in the first paragraph specify to be the powers and duties of the Minister of Finance or the Bank of Thailand, shall continue to be the powers and duties of the Minister of Finance or the Bank of Thailand, as the case may be, until the SEC and the Secretary General have been appointed, such powers and duties shall become the powers and duties of the Minister, the SEC or the SEC Office, as the case may be.

SECTION 329. The Securities Exchange of Thailand which has been established under the Securities Exchange of Thailand Act B.E. 2517 shall be the Securities Exchange under this Act. The board of directors of the Securities Exchange of Thailand and the manager of the Securities Exchange of Thailand who remain in office on the date of this Act coming into force shall continue to perform their duties until there has been the appointment and election of the board of directors of the Securities Exchange and the manager of the Securities Exchange in accordance with this Act which shall not exceed one hundred and twenty days from the date of this Act coming into force.

SECTION 330. The officers and employees of the Securities Exchange, established under the Securities Exchange of Thailand Act B.E. 2517, shall be transferred to the Securities Exchange under this Act.

SECTION 331. All businesses, capital, assets, rights, indebtedness, liabilities and budget of the Securities Exchange including all the money in the Compensation Fund established under the Securities Exchange of Thailand Act B.E. 2517 shall be transferred to the Securities Exchange under this Act.

SECTION 332. The Securities Exchange shall pay to the SEC Office an amount of fifty million baht annually for a period of five years. The payment in the first year shall be made within thirty days from the date of the publication of this Act in the Government Gazette, and the payment in the following years shall be made within thirty days from the last day of the calendar year of this Act coming into force and of each following year until the end of the five year period.

The money paid under the first paragraph shall be deemed as money payable by the Securities Exchange in accordance with Section 182 as long as there has been a payment under the first paragraph.

SECTION 333. Members of the Securities Exchange, established under the Securities Exchange of Thailand Act B.E. 2517, shall be members of the Securities Exchange under this Act.

SECTION 334. Securities, which have been traded in the Securities Exchange established under the Securities Exchange of Thailand Act B.E. 2517, shall be listed securities under this Act. In cases where a company whose securities are listed in the Securities Exchange is a limited company under the Civil and Commercial Code on the date of this Act coming into force, such company shall convert into a public limited company under the law relating to the public limited companies within two years from the date of this Act coming into force. In cases of necessity, the SEC may extend such period, but may not extend such period beyond five years from the date of this Act coming into force.

SECTION 334/1.⁵ Any securities issuing company whose securities are traded on the Stock Exchange on the effective date of the Securities and Exchange Act B.E. 2535 shall be deemed a securities issuing company under Section 33, and shall have the same duties and responsibilities as the securities issuing company.

SECTION 335. In cases where any company has proceeded to submit an application for approval from the Minister of Finance to accept its securities to be registered or authorized securities through the board of directors of the Securities Exchange in accordance with Section 18 and Section 19 of the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527 and the Minister of Finance has not yet issued an order accepting such securities to be registered or authorized securities prior to date of this Act coming into force, the aforesaid matter shall continue to proceed in accordance with Section 18 and Section 19 of such Acts and the powers and duties of the Minister of Finance shall be the powers and duties of the SEC.

When the SEC has issued an order accepting the securities of the applying company as registered or authorized securities in accordance with the first paragraph, such securities shall be deemed as listed securities under this Act and the company whose securities are so listed shall convert into a public limited company in accordance with Section 334 of this Act.

SECTION 336. In cases where any company has proceeded to submit an application for approval to the board of directors of the Securities Exchange to offer newly issued shares or debentures for sale to the public in accordance with Section 19 *ter* of the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527 and the board of directors of the Securities Exchange has not yet issued an approval to such company to offer newly issued shares and debentures for sale to the public prior to date of this Act coming into force, the board of directors of the Securities Exchange shall proceed to consider such application in accordance with the rules and procedures specified by the board of directors of the Securities Exchange with the approval of the Minister of Finance under Section 19 *ter* of such Acts. In cases where it is necessary to alter or modify such rules and procedures in order that the consideration of the application may be accomplished, the board of directors of the Securities Exchange may specify any rules or procedures with the approval of the SEC.

SECTION 337. A company which has been given an approval to offer newly issued shares or debentures for sale to the public in accordance with Section 19 *ter* of the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527 prior to date of this Act coming into force, or a company which has been given an approval to offer newly issued shares or debentures for sale to the public in accordance with Section 336 of this Act, such company shall continue to offer newly issued shares or debentures for sale to the public in accordance with the rules and procedures as specified by Section 19 *ter* of such Acts. Where it is necessary to alter or modify such rules and procedures in order that the offer of newly issued shares or debentures for sale to the public can be accomplished, the board of directors of the Securities Exchange may specify any rules or procedures with the approval of the SEC.

SECTION 338. All ministerial regulations and notifications of the Ministry of Finance which have been issued in accordance with the provisions of the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527, rules of the Securities Exchange of Thailand, regulations of the Securities Exchange of Thailand, procedures of the Securities Exchange of Thailand, procedures concerning shares register and notifications of the Securities Exchange of Thailand which have been in force prior to date of this Act coming into force shall remain in force until the ministerial regulations, notifications, rules, regulations or procedures issued under this Act come into force.

Any matter specified by the ministerial regulations, notifications, rules and regulations under the first paragraph to be the powers and duties of the Minister of Finance or the board of directors of the Securities Exchange of Thailand shall continue to be the powers and duties of the Minister of Finance or the board of directors of the Securities Exchange of Thailand until the SEC or the board of directors of the Securities Exchange have been appointed in accordance with this Act, such powers and duties shall become the powers and duties of the Minister, the SEC or the board of directors of the Securities Exchange, as the case may be.

SECTION 339. Any person providing a service of a securities registrar prior to date of this Act coming into force may continue to provide such service, provided that an application for a license to provide such service shall be submitted within one hundred and twenty days after the date of this Act coming into force. After the application has been submitted such persons may continue to provide the service unless application for a license has been refused.

SECTION 340. All associations, which have the same characteristics or objects as the associations related to securities business and which have been registered as trade associations under the law relating to trade associations prior to date of this Act coming into force, wishing to become the associations related to securities business in accordance with this Act, shall submit an application for approval to be an association related to securities business within ninety days from the date of this Act coming into force. After the approval has been granted in accordance with this Act, the registrar of trade associations under the law relating to trade associations shall delete the name of such association from the trade associations register.

All assets and liabilities of associations having the same characteristics or objects as associations related to securities business which have been given an approval and registered as associations relating to securities business in accordance with this Act shall be transferred to the associations related to securities business which have been newly established.

In cases where any association having the same characteristics or objects as an association related to securities business which is a trade association under the law relating trade associations does not submit an application to become an association related to securities business in accordance with this Act within the time specified in the first paragraph, it shall be dissolved. In this regard, the registrar of the trade associations under the law relating to the trade associations shall delete the name of such association from the trade associations register.

In cases where any trade association is not satisfied with the order of the registrar of the trade associations under the law relating to trade associations to delete the name of such association from the register, the trade association shall have the right to appeal against such order by submitting an appeal to the SEC within fifteen days from the date of the receipt of the order. The decision of the SEC shall be final.

SECTION 341. A competent official who has been appointed in accordance with the law relating to the undertaking of finance business, securities business and credit foncier business, and in accordance with the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527 shall be the competent official which has been appointed under this Act until the SEC shall order otherwise.

In executing his duty, identification cards issued to the competent official referred to in the first paragraph shall be the identification cards of the competent official under this Act. After the appointment of the Secretary General has been made, the competent official shall report the execution of his duty to the SEC Office.

SECTION 342. The Criminal Fining Committee under this Act shall have the power to settle only offences concerning securities business which may be settled under the law relating to the undertaking of finance business, securities business and credit foncier business or under the Securities Exchange of Thailand Act B.E. 2517 as amended by the Securities Exchange of Thailand Act (No. 2) B.E. 2527.

SECTION 343. Any securities company which contravenes the provisions of Section 322 or fails to comply with the rules and conditions of the first paragraph of Section 324 shall be liable to a fine not exceeding three hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

In cases where there have been contraventions or non-compliance by the securities company under the first paragraph, if it can be proved that such offences by the securities company resulted from the order, the act or the failure to order or the omission to act which are duties to be performed by any director, manager or person responsible for the operation of such securities company, that person shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand baht, or both.

SECTION 344. The Criminal Fining Committee referred to in Section 317 shall have the power to settle the offences under Section 343.

Countersigned by:

Anand Punyarachun
Prime Minister

**TRANSITIONAL PROVISIONS OF THE SECURITIES AND EXCHANGE ACT
(No.5) B.E. 2559**

SECTION 47. The provision under Chapter 12/1: Civil Sanctions of the Securities and Exchange Act B.E. 2535, as amended by this Act shall apply to the offences under the Securities and Exchange Act B.E. 2535 which has committed before this Act becomes effective and a criminal complaint has not been filed with the inquiry official, and the penalties to be imposed on the offender shall not exceed the penalties under the Securities and Exchange Act B.E. 2535 in effect during the commission of such offence.

SECTION 48. All rules, regulations, notifications, or orders of the SEC, the Capital Market Supervisory Board or the SEC Office which have been issued in accordance with the Securities and Exchange Act B.E. 2535 and have been in effect before this Act becomes effective, shall remain in full force as long as it does not contravene or contradict the Securities and Exchange Act B.E. 2535, as amended by this Act until rules, regulations, notifications or orders, which have been issued under the Securities and Exchange Act B.E. 2535 as amended by this Act become effective.
