

Translation

NOTIFICATION OF THE MINISTRY OF FINANCE

RE: THE PERMISSION TO ISSUE BAHT-DENOMINATED BONDS OR DEBENTURES IN THAILAND

In compliance with the strategic plan of the Ministry of Finance in developing the domestic bond market to become a regional hub of debt financing by contributing a variety of debt instruments and by expanding the base of issuers and investors in the local bond market, which includes the development of domestic bond market infrastructure to accommodate the issuance of debt instruments within the Asian Bond Markets Initiative, and in conjunction with the Notification of the Securities and Exchanges Commission on the Rules of Issuance and Offer for Sale of Foreign Bonds and Debentures in Thailand, whereby the issuer of bonds or debentures must proceed under the conditions prescribed and allowed by the Ministry of Finance, the Minister of Finance hereby issues a notification to prescribe the rules for permitting the issuance of baht-denominated bonds or debentures in Thailand as follows:

Clause 1. The following shall be repealed:

(1) The Notification of the Ministry of Finance Re: The Permission for International Financial Institutions to Issue Baht-denominated Bonds or Debentures in Thailand, dated 21st April B.E. 2547 (2004);

(2) The Notification of the Ministry of Finance Re: The Permission for Foreign Governments or Financial Institutions of Foreign Governments to Issue Baht-denominated Bonds or Debentures in Thailand, dated 25th May B.E. 2547 (2004).

Clause 2. In this Notification:

“Commission” means the Securities and Exchange Commission under the law on securities and exchange;

“Office” means the Office of the Securities and Exchange Commission under the law on securities and exchange;

“permittee” means a person who is permitted under this Notification to sell bonds or debentures;

“Minister” means the Minister of Finance.

Clause 3.¹ Qualifications of a Potential Issuer. A potential issuer of bonds or debentures under this Notification are as follows:

(1) an international financial institution established under a treaty regardless of the status of Thailand being a party thereto;

(2) an agency or an organisation of a foreign Government, or a financial institution of a foreign Government established by virtue of a specific law;

(3) a juristic person established under the law of a foreign country;

(4) a special purpose vehicle (SPV) established to carry out securitisation, whereby the originator is an agency or an organisation of a foreign government, or a juristic person under the law of a foreign country.

“foreign country” under (2), (3) and (4) is a country within the Association of Southeast Asian Nations and includes Japan, the Republic of Korea and People’s Republic of China (ASEAN+3) or any other country as the Minister deems fit.

¹ Clause 3 is amended by the Notification of the Ministry of Finance Re: The Permission to Issue Baht-denominated Bonds or Debentures in Thailand (No. 2), dated 4th May B.E. 2554 (2011).

Clause 4.² Submission of Application. A potential issuer of bonds or debentures under this Notification shall submit a written application to the Minister with the following details:

- (1) the objectives for issuing bonds or debentures;
- (2) the type and maturity of bonds or debentures;
- (3) the amount of issuance;
- (4) the offering method;
- (5) the issuance period of bonds or debentures;
- (6) the use of proceeds from the issuance of bonds or debentures;
- (7) the Swap transaction of Thai baht into other foreign currency (if applicable);
- (8) the credit rating of:
 - (a) the issuer of bonds or debentures; or,
 - (b) the guarantor of debt repayment under the bonds or debentures; or,
 - (c) the bond or debenture to be issued;
- (9) security (if applicable).

In the case where the potential issuer of bonds or debentures has not received a credit rating under paragraph one (8), the provisions of (8) shall not apply to the submission of an application in the following cases:

- (1) the case of an application for the issuance of bonds or debentures of an agency or an organisation of a foreign Government³; or,
- (2) the case of an application for the issuance of bonds or debentures where the guarantor for repayment of debt is a foreign Government.

² Clause 4 is amended by the Notification of the Ministry of Finance Re: The Permission to Issue Baht-denominated Bonds or Debentures in Thailand (No. 3), dated 3rd September B.E. 2555 (2012).

³ “an agency or an organisation of a foreign Government” means the case where an agency or an organisation of a foreign Government submits an application for issuance of bonds or debentures in the name of a foreign Government, which is consistent with the provision in clause 3 (1).

The meaning of “foreign” shall be in accordance with the provision in clause 3 paragraph two.

The potential issuer must prove its capability to issue bonds or debentures by, for example, submitting the specific law of establishment or its memorandum of association, etc. For this purpose, the Minister may require submission of additional documents or evidence.

Clause 5. The Maturity of Bonds or Debentures. The bond or debenture which the permittee may offer for sale under this Notification shall have the maturity of more than three years from the date of issuance. The bond or debenture may contain the following rights:

(1) the right of the issuer of the bond or debenture to oblige the holder of the bond or debenture to redeem the bond or debenture before the maturity date (call option);

(2) the right of the holder of the bond or debenture to oblige the issuer of the bond or debentures to repay the value of the bond or debenture before the maturity date (put option).

The rights under (1) or (2) shall not have the effect of depleting the maturity of the bond or debenture to less than three years as from the date of its issuance.

Clause 6. The Amount of Issuance. The amount of issuance of the bond or debenture which the permittee may offer for sale shall not exceed the amount of issuance such person is permitted under this Notification.

Clause 7. Credit Rating. A permittee or a guarantor of debt repayment of the bond or debenture, or the bond or debenture which is to be offered for sale must receive a credit rating that is approved by the Ministry of Finance, by a credit rating agency which has been approved by the Office.

Clause 8. Applicable Law and Jurisdiction. A permittee shall ensure that a term of the contract for the bond or debenture states that the laws of Thailand shall be applicable

to the terms of the bond or debenture, and any actionable dispute to be resolved in connection with the bond or debenture shall be within the jurisdiction of the Thai courts, or under the laws or jurisdiction of another country which the Minister deems fit.

Clause 9. Waiver of Immunity. In the case where a permittee has or will have immunity from the jurisdiction and enforcement of court, such permittee shall ensure that a term of the contract for the bond or debenture or any other necessary measures provides for a waiver of such immunity, except for the immunity in the following properties, where the applicant for issuance of bonds or debentures may elect not to waive immunity:

(1) properties situated in Thailand which are used for the purpose of diplomatic matters or international relations;

(2) properties used for military purposes;

(3) properties used for the public benefit of the people of such State, but shall not include any asset which is used by the State for commercial purposes.

Clause 10.⁴ Disclosure of Information. A permittee shall comply with the law on securities and exchange in the part relating to the disclosure of information for the sale of securities and regulations prescribed by notification of the Capital Market Supervisory Board.

Clause 11.⁵ An Agent of a Holder of Bonds or Debentures. A permittee shall ensure that there is an agent representing the holders of bonds or debentures in Thailand for the whole maturity period of the bond or debenture to protect the rights of the holders of the bonds or debentures, except in the case where bonds or debentures are issued under the Framework of International Cooperation for the Sale of Securities, where there shall be an agent

⁴ Clause 10 is amended by the Notification of the Ministry of Finance Re: The Permission to Issue Baht-denominated Bonds or Debentures in Thailand (No. 2), dated 4th May B.E. 2554 (2011).

⁵ Clause 4 is amended by the Notification of the Ministry of Finance Re: The Permission to Issue Baht-denominated Bonds or Debentures in Thailand (No. 3), dated 3rd September B.E. 2555 (2012).

representing the holders of bonds or debentures in accordance with the regulations prescribed by Notification of the Capital Market Supervisory Board.

Clause 12. An Agent for Contacting Authorities in Thailand. A permittee shall ensure that there is, for the whole maturity period of the bonds or debentures, an agent situated in Thailand for receiving letters, orders, summonses, documents, or for contacting authorities regarding the issuance and offer for sale of bonds or debentures in Thailand.

In the case where the agent under paragraph one is subsequently changed, the permittee shall notify the Office without delay.

Clause 13. The Securities Registrar. A permittee shall appoint the Thai Securities Depository Limited Company or other securities registrar prescribed by the Minister as registrar for such bonds or debentures.

Clause 14. Registration. A permittee shall register bonds or debentures offered for sale with the Thai Bond Market Association which is registered and established under the law on securities and exchange.

Clause 15.⁶ Updating Data in the Declaration Form for the Sale of Bonds or Debentures. The issuer of bonds or debentures shall update current data in the declaration form for the sale of bonds or debentures, as follows:

(1) within one hundred and eighty days as from the end of the fiscal year or the end of the accounting period of the issuer of the bond or debenture;

(2) as soon as the financial status of the issuer of the bond or debenture is substantially affected.

⁶ Clause 11 is amended by the Notification of the Ministry of Finance Re: The Permission to Issue Baht-denominated Bonds or Debentures in Thailand (No. 4), dated 23rd April B.E. 2558 (2015).

The issuer of bonds or debentures shall submit the updated declaration form for the sale of bonds or debentures under paragraph one to the Office.

In the case where any issuer of bonds or debentures is exempted from the submission of the declaration form for the sale of bonds or debentures in accordance with a Notification of the Commission, such issuer of bonds or debentures shall disclose data which has been updated according to paragraph one to the general public via an information platform or any other channel to which investors or the general public have access.

Clause 16. Duties under Other Relevant Laws. A person permitted to issue bonds or debentures shall still have the duties relating to a request for approval to use the proceeds obtained from the issuance of bonds or debentures, tax liabilities and deduction of tax at source, and other duties in accordance with the laws and regulations or rules prescribed by relevant State agencies.

Clause 17. The Prescription of Rights and Duties of the Issuer of Bonds or Debentures. With respect to the duties of a permittee under clause 11, clause 12 and clause 15, the permittee shall stipulate such details as part of the terms and conditions of the rights and duties of the issuer of bonds or debentures and the holder of bonds or debentures. This shall include the terms and conditions relating to such matters which the Minister prescribes as a condition in such permission.

Clause 18. Maintenance of Liquidity Asset and Legal Reserves and the Use in Buy-back Transactions with the Bank of Thailand. The maintenance of liquidity asset and legal reserves and the use in buy-back transactions with the Bank of Thailand shall be in compliance with the laws, rules or regulations prescribed by relevant State agencies.

Clause 19. Transitory Provisions. The request for permission, the granting of permission and the issuance of baht-denominated bonds or debentures in Thailand which was made prior to the entry into force of this Notification shall continue to be under the authority of the Notification of the Ministry of Finance which is in force during the period of the request for permission, grant of permission and the issuance of baht-denominated bonds or debentures in Thailand.

This Notification shall come into force with immediate effect.

Given on the 11th Day of April B.E. 2549

(Signature)

(Mr. Thanong Phitya)

The Minister of Finance