

เอกสารรับฟังความคิดเห็น

เรื่อง

การเปิดเผยข้อมูลกรณีบริษัทต่างประเทศ

เข้ามาเสนอขายหุ้นในประเทศไทย



สำนักงาน สำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์ (<http://www.sec.or.th>)

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เอกสารเผยแพร่

เลขที่ อก. 9/2552

เรื่อง

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เข้ามาเสนอขายหุ้นที่ออกใหม่ในประเทศไทย

จัดทำโดย

สำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์

เผยแพร่เมื่อวันที่ 26 มกราคม 2552

เพื่อรับฟังความคิดเห็นจากผู้เกี่ยวข้อง

วันสุดท้ายของการแสดงความคิดเห็น วันที่ 10 กุมภาพันธ์ 2552

ท่านสามารถ download เอกสารเผยแพร่ฉบับนี้ได้จาก [www.sec.or.th](http://www.sec.or.th)

ฝ่ายส่งเสริมบรรษัทภิบาล

มกราคม 2552

## บทนำ

ด้วยสำนักงานมีแนวคิดที่จะเปิดให้บริษัทต่างประเทศเข้ามาเสนอขายหุ้นที่ออกใหม่แก่ผู้ลงทุนในประเทศไทยได้ โดยสำนักงานและตลาดหลักทรัพย์แห่งประเทศไทยอยู่ระหว่างการศึกษาหลักเกณฑ์การอนุญาตให้เสนอขายหุ้นที่ออกใหม่ของบริษัทต่างประเทศ และหลักเกณฑ์อื่นที่เกี่ยวข้อง ทั้งนี้ ในส่วนหลักเกณฑ์การเปิดเผยข้อมูลการเสนอขายหุ้นที่ออกใหม่ สำนักงานมีแนวคิดที่จะใช้มาตรฐานการเปิดเผยข้อมูลที่ตกลงร่วมกันในกลุ่มประเทศอาเซียน จึงได้จัดทำเอกสารฉบับนี้ขึ้นเพื่อรับฟังความคิดเห็นเกี่ยวกับแนวทางการเปิดเผยข้อมูลดังกล่าวจากกลุ่มผู้ที่เกี่ยวข้อง เช่น บริษัทต่างประเทศที่ประสงค์จะออกและเสนอขายหลักทรัพย์ ที่ปรึกษาการเงิน ที่ปรึกษากฎหมาย และกลุ่มผู้ลงทุน ตลอดจนกลุ่มผู้สนใจทั่วไป ผ่านทาง website ของสำนักงาน ทั้งนี้ สำนักงานจะนำข้อคิดเห็นต่าง ๆ จากผู้เกี่ยวข้องไปใช้เป็นข้อมูลประกอบการพิจารณาดำเนินการปรับปรุงแก้ไขเกณฑ์การเปิดเผยข้อมูลกรณีดังกล่าวให้เหมาะสมในทางปฏิบัติต่อไป

การเปิดรับฟังความคิดเห็นในเรื่องนี้ จะมีไปจนถึงในวันที่ 10 กุมภาพันธ์ 2552 โดยผู้ที่สนใจและประสงค์จะแสดงความคิดเห็น สามารถส่งความเห็นหรือข้อเสนอแนะที่เป็นประโยชน์แก่สำนักงานได้ทั้งในรูปแบบเอกสารหรือจดหมายอิเล็กทรอนิกส์ได้ตามรายละเอียดที่ระบุไว้ด้านล่างนี้

1. ทางไปรษณีย์: ฝ่ายส่งเสริมบรรษัทภิบาล สำนักงานคณะกรรมการ ก.ล.ต.  
ชั้น 13 อาคารจีพีเอฟ วิทยู ทาวเวอร์ บี 93/1 ถนนวิทยู แขวงลุมพินี เขตปทุมวัน กรุงเทพฯ 10330
2. ทางโทรสาร: หมายเลข 0-2263-6099
3. ทาง e-mail address: [corgov@sec.or.th](mailto:corgov@sec.or.th)

หากท่านมีข้อสงสัยประการใด โปรดติดต่อสอบถามเพิ่มเติมได้ที่นายธีระภาพ กาญจนชัยภูมิ และนางสาวมะลิ วันทนาศิริ ฝ่ายส่งเสริมบรรษัทภิบาล สำนักงานคณะกรรมการ ก.ล.ต. โทรศัพท์หมายเลข 0-2263-6214 หรือ 0-2263-6107 หรือทาง e-mail address: [peerapar@sec.or.th](mailto:peerapar@sec.or.th) หรือ [mali@sec.or.th](mailto:mali@sec.or.th) ทั้งนี้ สำนักงานขอขอบคุณทุกท่านที่เข้าร่วมแสดงความคิดเห็นและข้อเสนอแนะที่เป็นประโยชน์กับสำนักงานมา ณ โอกาสนี้

## การเปิดเผยข้อมูลกรณีบริษัทต่างประเทศ เข้ามาเสนอขายหุ้นที่ออกใหม่ในประเทศไทย

### ความเป็นมา

สำนักงานมีแนวคิดที่จะเปิดให้บริษัทต่างประเทศเข้ามาเสนอขายหุ้นที่ออกใหม่แก่ผู้ลงทุนในประเทศไทยได้ โดยสำนักงานและตลาดหลักทรัพย์แห่งประเทศไทยอยู่ระหว่างการพิจารณาหลักเกณฑ์การอนุญาตให้เสนอขายหุ้นที่ออกใหม่ของบริษัทต่างประเทศ และหลักเกณฑ์อื่นที่เกี่ยวข้อง ทั้งนี้ ในส่วนการกำหนดหลักเกณฑ์การเปิดเผยข้อมูลการเสนอขายหุ้นที่ออกใหม่นั้น ที่ผ่านมา ASEAN Capital Markets Forum (“ACMF”) ซึ่งประกอบด้วยองค์กรกำกับดูแลตลาดทุนในกลุ่มประเทศอาเซียน 10 ประเทศ ได้แก่ บรูไน กัมพูชา อินโดนีเซีย ลาว มาเลเซีย พม่า ฟิลิปปินส์ สิงคโปร์ เวียดนาม และไทย ได้ร่วมกันจัดทำเอกสารการเปิดเผยข้อมูลการเสนอขายหุ้นที่เรียกว่า “ASEAN Equity Disclosure Standards” \* เพื่อสนับสนุนการเสนอขายหลักทรัพย์ระหว่างประเทศในภูมิภาคอาเซียน ซึ่งมีแนวทางส่วนใหญ่อ้างอิงตาม IOSCO International Disclosure Standards for Cross-border Offerings and Initial Listings by Foreign Issuers (“IOSCO Standards) เป็นหลัก โดยแต่ละประเทศได้กำหนดรายละเอียดส่วนเพิ่ม (Plus Standards) ในบางเรื่องเท่าที่จำเป็น หรือเป็นข้อจำกัดทางกฎหมายของแต่ละประเทศ (รายละเอียดตามเอกสารแนบ)

การร่วมมือจัดทำ ASEAN Equity Disclosure Standards ข้างต้น มีวัตถุประสงค์หลักเพื่อให้การระดมทุนในกลุ่มประเทศอาเซียนมากกว่า 1 ประเทศสามารถทำได้สะดวกและคล่องตัว โดยผู้ออกหุ้น (“issuer”) สามารถจัดทำเอกสารการเปิดเผยข้อมูลการเสนอขายเพียงชุดเดียวสำหรับการเสนอขายหุ้นต่อผู้ลงทุนทั่วไป (public offering) ในหลายประเทศในกลุ่มอาเซียน ทั้งนี้ ที่ประชุม ACMF ได้ตกลงที่จะปรับปรุงแก้ไขเกณฑ์การเปิดเผยข้อมูลสำหรับผู้ออกหลักทรัพย์ต่างประเทศ เพื่อผลักดันให้เกิดความเชื่อมโยงเป็นตลาดเดียวกันในกลุ่มประเทศอาเซียน

### แนวทางการเปิดเผยข้อมูล

ตามเกณฑ์ปัจจุบัน issuer ต่างประเทศสามารถเสนอขายหุ้นแก่ผู้ลงทุนในประเทศไทยได้ต่อเมื่อได้รับอนุญาตจากสำนักงาน และเปิดเผยข้อมูลตามแบบแสดงรายการข้อมูลการเสนอขายหลักทรัพย์และร่างหนังสือชี้ชวน (filing - แบบ 69-1) ตามที่คณะกรรมการกำกับตลาดทุนประกาศกำหนด อย่างไรก็ตาม เพื่อให้การเปิดเผยข้อมูลของ issuer ต่างประเทศเป็นไปตามมาตรฐานการเปิดเผยข้อมูลที่ตกลงร่วมกันในกลุ่มประเทศอาเซียน สำนักงานจึงมีแนวคิดที่จะปรับปรุงแบบ filing สำหรับการเสนอขายหุ้นของ issuer ต่างประเทศให้เป็นไปตาม ASEAN Equity Disclosure Standards ข้างต้น

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\* ผู้สนใจสามารถดูรายละเอียดได้ที่ <http://www.aseansec.org/acmf/introduction.htm>

ทั้งนี้ แบบ filing สำหรับการเสนอขายหุ้นในปัจจุบัน ส่วนใหญ่ (37 ข้อ จาก 45 ข้อ) มีรายการเป็นไปตามมาตรฐาน ASEAN Equity Disclosure Standards แล้ว และยังมีบางรายการ (8 ข้อ จาก 45 ข้อ) ที่แบบ filing ปัจจุบันมิได้ครอบคลุมถึงตามที่กำหนดใน ASEAN Equity Disclosure Standards โดยมีสรุปการเปรียบเทียบข้อมูล ดังนี้

<b>ASEAN Equity Disclosure Standards</b> (รายละเอียดตามเอกสารแนบ)	<b>แบบ filing ปัจจุบัน (แบบ 69-1)</b>
<b>I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS</b>	
A. Directors and Senior Management	ข้อมูลเกี่ยวกับกรรมการและผู้บริหาร
B. Corporate Secretary	เลขานุการบริษัท
C. Advisers and other parties	ที่ปรึกษาทางการเงิน และผู้จัดทำนายหลักทรัพย์
D. Auditors	ผู้สอบบัญชี
<b>II. OFFER STATISTICS AND EXPECTED TIMETABLE</b>	
A. Offer Statistics	รายละเอียดหลักทรัพย์ที่เสนอขาย
B. Method and Expected Timetable	วิธีการและกำหนดเวลาการเสนอขายหลักทรัพย์
<b>III. KEY INFORMATION</b>	
A. Selected Financial Data	ข้อมูลที่สำคัญทางการเงิน
B. Capitalization and Indebtedness	โครงสร้างเงินทุนและและภาวะผูกพัน
C. Reasons for the Offer and Use of Proceeds	วัตถุประสงค์การใช้เงิน
D. Expenses of the Issue	ค่าใช้จ่ายในการออกและเสนอขายหลักทรัพย์
E. RISK FACTORS	ปัจจัยความเสี่ยง
<b>IV. INFORMATION ON THE ISSUER</b>	
A. History and Development of the Issuer	ประวัติความเป็นมาและพัฒนาการที่สำคัญ
B. Business overview	ภาพรวมการประกอบธุรกิจ
C. Organization Structure	โครงสร้างบริษัท
D. Property, Plants and Equipment	ทรัพย์สินที่ใช้ในการประกอบธุรกิจ
<b>V. OPERATING AND FINANCIAL REVIEW AND PROSPECTS</b>	
A. Operating Results	ผลการดำเนินงาน
B. Liquidity and Capital Resources	แหล่งเงินทุนและสภาพคล่อง
C. Research & Development, Patents and License, etc.	การวิจัยและพัฒนา
D. Trend Information & Profit Forecast	แนวโน้มและประมาณการผลกำไรในอนาคต
<b>VI. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES</b>	
A. Directors and Senior Management	กรรมการและผู้บริหาร
B. Compensation	ค่าตอบแทน
C. Board practice	การปฏิบัติงานของคณะกรรมการบริษัท
D. Employees	พนักงานบริษัท
E. Share Ownership	การถือหุ้นของกรรมการและผู้บริหาร
<b>VII. MAJOR SHAREHOLDERS, RELATED PARTY TRANSACTIONS AND CONFLICT OF INTERESTS</b>	
A. Major Shareholders	ผู้ถือหุ้นรายใหญ่
B. Related Party Transactions	รายการที่เกี่ยวข้องกัน
C. Conflict of interest	ความขัดแย้งทางผลประโยชน์
C. Interests of Experts, Counsel, Underwriters and Financial Advisers	ผลประโยชน์ที่ผู้เชี่ยวชาญ ผู้จำหน่ายหลักทรัพย์และที่ปรึกษาทางการเงินได้รับจากการออกหลักทรัพย์
<b>VIII. FINANCIAL INFORMATION</b>	
A. Consolidated Statements and Other Financial Information	งบการเงินและข้อมูลทางการเงินอื่น
B. Significant Changes	การเปลี่ยนแปลงที่สำคัญ
<b>IX. THE OFFER AND LISTING</b>	
A. Offer and Listing Details	รายละเอียดเกี่ยวกับการเสนอขายและจดทะเบียนหลักทรัพย์
B. Plan of Distribution	แผนการจัดจำหน่ายหลักทรัพย์
C. Markets	ข้อมูลเกี่ยวกับตลาดหลักทรัพย์ที่ผู้ออกหลักทรัพย์ได้มีการเสนอขายหลักทรัพย์และจดทะเบียนหลักทรัพย์อยู่
D. Selling and Shareholders	รายละเอียดการขายหุ้นของผู้ถือหุ้นเดิมพร้อมการเสนอขายหลักทรัพย์ในครั้งนี้
E. Dilution	การลดลงของมูลค่าหุ้นหลังการเสนอขายหลักทรัพย์

ASEAN Equity Disclosure Standards (รายละเอียดตามเอกสารแนบ)	แบบ filing ปัจจุบัน (แบบ 69-1)
<b>X. ADDITIONAL INFORMATION</b>	
A. Share Capital	จดทะเบียน
B. Memorandum and Articles of Association	หนังสือบริคณห์สนธิและข้อบังคับบริษัท (X)
C. Material Contracts	รายละเอียดเกี่ยวกับสัญญาที่สำคัญ (X)
D. Exchange Controls	การควบคุมอัตราแลกเปลี่ยน (X)
D. Taxation	ภาษี (X)
E. Dividends and Paying Agents	เงินปันผลและตัวแทนชำระเงินของผู้ออกหลักทรัพย์ (X)
G. Statement by Experts	ข้อความโดยผู้เชี่ยวชาญ (X)
H. Sign offs or consents from persons advising the issuer in the preparation of the prospectus	การลงลายมือชื่อยินยอมให้เปิดเผยข้อมูลผู้จัดเตรียมข้อมูลในหนังสือชี้ชวน (X)
I. Document for public inspection	เอกสารที่ต้องเปิดเผยเพื่อให้ผู้ลงทุนสามารถตรวจสอบข้อมูล (X)
J. Subsidiary Information	ข้อมูลบริษัทย่อย

หมายเหตุ : (X) หมายถึงรายการที่ไม่ได้กำหนดให้เปิดเผยในแบบ filing ปัจจุบัน ซึ่ง issuer ต่างประเทศจะต้องเปิดเผยให้เป็นไปตาม ASEAN Equity Disclosure Standards ด้วย

## ประเด็นสำคัญในการเปิดเผยข้อมูลตามแนวทางที่เสนอ

### 1. ข้อมูลที่เปิดเผยตาม ASEAN Equity Disclosure Standards

#### 1.1 นิยาม “ผู้ถือหุ้นรายใหญ่”

filing ปัจจุบัน : “ผู้ถือหุ้นรายใหญ่” หมายถึง ผู้ถือหุ้นที่ถือหุ้นใน issuer เกินกว่าร้อยละ 10 ของจำนวนหุ้นที่มีสิทธิออกเสียง

แนวทางที่เสนอ : ใช้ ASEAN Equity Disclosure Standards โดยให้หมายถึงผู้ถือหุ้นที่ถือหุ้นตั้งแต่ร้อยละ 5 ของจำนวนหุ้นที่มีสิทธิออกเสียง

#### 1.2 การเปิดเผยรายการที่เกี่ยวข้องกัน

filing ปัจจุบัน: เปิดเผยข้อมูลรายการที่เกี่ยวข้องกันที่เป็นการกู้ยืมหรือการทำธุรกรรมระหว่าง issuer กับบุคคลที่มีความเกี่ยวข้อง ในปีที่ผ่านมาจนถึงปัจจุบัน

แนวทางที่เสนอ : ใช้ ASEAN Equity Disclosure Standard โดยให้เปิดเผยข้อมูลรายการที่เกี่ยวข้องกันดังกล่าว ย้อนหลัง 3 ปีจนถึงปัจจุบัน

#### 1.3 การจัดทำและเปิดเผยข้อมูลในงบการเงิน

filing ปัจจุบัน : งบการเงินต้องเป็นไปตามมาตรฐานการบัญชีที่ใช้กับบริษัทมหาชนจำกัด

แนวทางที่เสนอ : ใช้ ASEAN Equity Disclosure Standards โดยให้จัดทำงบการเงินตามมาตรฐานการบัญชี IFRS และมีการตรวจสอบบัญชีตามมาตรฐานการสอบบัญชีระหว่างประเทศ (International Standards on Auditing : ISA)

## 1.4 ประมาณการงบการเงิน (pro forma financial statement) กรณี Issuer

### มีการซื้อกิจการหรือรวมธุรกิจ

filing ปัจจุบัน : กรณีมีการรวมธุรกิจภายใต้การควบคุมเดียวกัน (under common control) ให้จัดทำงบการเงินรวมที่แสดงถึงผลของการรวมธุรกิจดังกล่าว เสมือนว่ามีการรวมธุรกิจเกิดขึ้นตั้งแต่วันเริ่มต้นงวดปีบัญชี 2 ปีล่าสุด หรือตั้งแต่วันที่มีการรวมกิจการ แล้วแต่วันใดจะเกิดขึ้นก่อน โดยงบการเงินรวมปีล่าสุดต้องตรวจสอบโดยผู้สอบบัญชีที่ได้รับความเห็นชอบจากสำนักงานกรณีได้มาซึ่งทรัพย์สินหรือกิจการนอกเหนือจากการรวมธุรกิจข้างต้น งบการเงินรวมจะต้องแสดงผลจากการได้มาซึ่งทรัพย์สินหรือกิจการตั้งแต่วันที่ได้มา

แนวทางที่เสนอ: ใช้ ASEAN Equity Disclosure Standards ดังนี้

- กรณีมีการรวมธุรกิจภายใต้การควบคุมเดียวกัน (under common control) ให้จัดทำงบการเงินรวมที่แสดงถึงผลของการรวมธุรกิจดังกล่าว เสมือนว่ามีการรวมธุรกิจเกิดขึ้นตั้งแต่วันเริ่มต้นงวดปีบัญชี 3 ปีล่าสุด หรือตั้งแต่วันที่มีการรวมกิจการ แล้วแต่วันใดจะเกิดขึ้นก่อน โดยงบการเงินรวมดังกล่าวต้องตรวจสอบโดยผู้สอบบัญชีที่ได้รับความเห็นชอบจากสำนักงาน
- กรณีมีการได้มาซึ่งทรัพย์สินหรือกิจการใดๆ นอกเหนือจากการรวมธุรกิจข้างต้น งบการเงินรวมจะต้องแสดงผลจากการได้มาซึ่งทรัพย์สินหรือกิจการตั้งแต่วันที่ได้มา โดยงบการเงินรวมดังกล่าวไม่จำเป็นต้องตรวจสอบโดยผู้สอบบัญชี แต่ต้องรับรองความถูกต้องของข้อมูลโดยบุคคลที่ 3 เช่น ที่ปรึกษาทางการเงิน เป็นต้น

## 2. ข้อมูลที่เปิดเผยตามข้อกำหนดของประเทศที่เสนอขาย (host country)

แม้การจัดทำ ASEAN Equity Disclosure Standards จะมุ่งเน้นให้เปิดเผยข้อมูลที่เป็นมาตรฐานร่วมกันในประเทศอาเซียน แต่ยังมีนิยามหรือเงื่อนไขการเปิดเผยข้อมูลบางส่วนที่ไม่อาจกำหนดเป็นมาตรฐานร่วมกัน เนื่องจากแต่ละประเทศได้กำหนดนิยามหรือเงื่อนไขการเปิดเผยข้อมูลไว้หลากหลายและแตกต่างกันมาก ดังนั้น ACMF จึงอนุโลมให้ใช้นิยามตามที่ประเทศที่ไปเสนอขาย (host country) นั้นกำหนด โดยของไทยจะกำหนดให้ใช้ตามแนวทางเดียวกับ issuer ไทย ดังนี้

### 2.1 นิยาม “กรรมการและผู้บริหาร” ของ issuer (director and senior management)

ใช้แนวทางเดียวกับ issuer ไทย โดยให้ “ผู้บริหาร” หมายถึง กรรมการ ผู้จัดการ หรือผู้ดำรงตำแหน่งระดับบริหาร 4 รายแรกนับต่อจากผู้จัดการลงมา ผู้มีตำแหน่งเทียบเท่าระดับบริหาร รายที่ 4 ทุกราย รวมถึงผู้บริหารสายงานบัญชี/การเงินระดับผู้จัดการฝ่ายขึ้นไป

### 2.2 นิยาม “ผู้ถือหุ้นที่มีอำนาจควบคุม” ที่ใช้ในการเปิดเผยข้อมูลรายการระหว่างกัน

ใช้แนวทางเดียวกับ issuer ไทย โดยให้ “ผู้ถือหุ้นที่มีอำนาจควบคุม” หมายถึง บุคคลที่มีสิทธิออกเสียงในที่ประชุมผู้ถือหุ้นในสัดส่วนเกินกว่าร้อยละ 10 ขึ้นไป

### 2.3 งบการเงินระหว่างกาลที่เปิดเผยใน filing

ใช้แนวทางเดียวกับ issuer ไทย โดยให้เปิดเผยงบการเงินระหว่างกาล (สอบทาน) ในกรณีวันยื่น filing ห่างจากวันสิ้นปีบัญชีล่าสุดเกินกว่า 5 เดือน ดังนี้

- กรณีวันยื่น filing เกิน 5 เดือนแต่ไม่เกิน 8 เดือน นับจากวันสิ้นปีบัญชีล่าสุด ให้เปิดเผยงบการเงินอย่างน้อยไตรมาสแรกของปีปัจจุบัน
- กรณีวันยื่น filing เกิน 8 เดือน แต่ไม่เกิน 11 เดือน นับจากวันสิ้นปีบัญชีล่าสุด ให้เปิดเผยงบการเงินอย่างน้อย 6 เดือนแรกของปีปัจจุบัน
- กรณีวันยื่น filing เกิน 11 เดือน แต่ไม่เกิน 15 เดือน นับจากวันสิ้นปีบัญชีล่าสุด ให้เปิดเผยงบการเงินอย่างน้อย 9 เดือนแรกของปีปัจจุบัน

### 3. ภาษาที่ใช้ในการเปิดเผยข้อมูลใน filing และแบบแสดงรายการข้อมูลประจำปี

เกณฑ์ปัจจุบัน : ต้องจัดทำ filing เป็นภาษาไทย

แนวทางที่เสนอ : issuer ต่างประเทศสามารถจัดทำ filing และแบบแสดงรายการข้อมูลประจำปีเป็นภาษาอังกฤษได้โดยไม่ต้องมีคำแปลเป็นภาษาไทย ซึ่งจะสอดคล้องกับเกณฑ์การออกหลักทรัพย์อื่นของ issuer ต่างประเทศ เช่น ใบสำคัญแสดงสิทธิอนุพันธ์ หรือหุ้นกู้สกุลเงินต่างประเทศ ที่เสนอขายแก่ธนาคารพาณิชย์ในไทย

### 4. ระยะเวลาการมีผลใช้บังคับของ filing

เกณฑ์ปัจจุบัน : filing จะมีผลใช้บังคับเมื่อพ้น **30 วัน** นับแต่วันที่สำนักงานได้รับ filing

แนวทางที่เสนอ : เพื่อให้วันที่เริ่มนับระยะเวลาการยื่น filing สอดคล้องกับหลักเกณฑ์ของต่างประเทศ สำนักงานจึงมีแนวคิดที่จะปรับปรุงวิธีการนับระยะเวลาการยื่น filing สำหรับการเสนอขายหุ้นของ issuer ต่างประเทศ โดยให้มีผลใช้บังคับเมื่อพ้น **14 วัน** นับจากวันที่ยื่นข้อมูล filing ครบถ้วน (กรณีการออกและเสนอขายหุ้นของ issuer ไทย สำนักงานจะพิจารณาทบทวนในโอกาสต่อไป)



**แบบสำรวจความคิดเห็น**  
**การเปิดเผยข้อมูลกรณีบริษัทต่างประเทศ**  
**เข้ามาออกและเสนอขายหุ้นในประเทศไทย**

**ข้อมูลทั่วไป**

ชื่อผู้ตอบ \_\_\_\_\_ ตำแหน่ง \_\_\_\_\_

ชื่อบริษัท \_\_\_\_\_

เบอร์โทรศัพท์ \_\_\_\_\_ เบอร์โทรสาร \_\_\_\_\_

สถานะของบริษัท (ตอบได้มากกว่า 1 ข้อ)

บริษัทจดทะเบียนใน SET

บริษัทอยู่ระหว่างเตรียมเสนอขายหุ้นต่อประชาชนเพื่อเข้าจดทะเบียนในตลาดหลักทรัพย์

ที่ปรึกษากฎหมาย

ที่ปรึกษาทางการเงิน

ผู้ลงทุน

อื่นๆ (ระบุ) \_\_\_\_\_

เบอร์โทรศัพท์ \_\_\_\_\_ เบอร์โทรสาร \_\_\_\_\_

E-mail address \_\_\_\_\_

**ข้อคิดเห็น**

**1. การเปิดเผยข้อมูลตาม ASEAN Equity Disclosure Standards**

ท่านเห็นด้วยหรือไม่ที่สำนักงานจะกำหนดให้ issuer ต่างประเทศที่ประสงค์จะออกและเสนอขายหุ้นแก่ผู้ลงทุนทั่วไป (PO) ในประเทศไทย เปิดเผยข้อมูลการออกและเสนอขายหลักทรัพย์ใน filing ตามมาตรฐาน ASEAN Equity Disclosure Standards เพื่ออำนวยความสะดวกแก่ issuer ให้สามารถใช้เอกสารการเปิดเผยข้อมูลเป็นมาตรฐานเดียวกันในการเสนอขายหลายประเทศ

เห็นด้วย

ไม่เห็นด้วย

เพราะ \_\_\_\_\_

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2. ภาษาที่ใช้ในแบบ filing และแบบแสดงรายการข้อมูลประจำปี

ท่านเห็นด้วยหรือไม่ที่สำนักงานจะกำหนดให้ระยะเวลาการมีผลใช้บังคับของแบบ filing สำหรับการเสนอขายหุ้นที่ออกใหม่ของ issuer ต่างประเทศ

เห็นด้วย

ไม่เห็นด้วย

เพราะ \_\_\_\_\_

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3. ระยะเวลาการมีผลใช้บังคับของแบบ filing

ท่านเห็นด้วยหรือไม่ที่สำนักงานจะกำหนดให้การยื่น filing สำหรับการเสนอขายหุ้นที่ออกใหม่ของ issuer ต่างประเทศ มีผลใช้บังคับเมื่อพ้น 14 วันนับจากวันที่ยื่นข้อมูล filing ครบถ้วน

เห็นด้วย

ไม่เห็นด้วย

เพราะ \_\_\_\_\_

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4. ข้อเสนอแนะอื่นๆเพิ่มเติมเกี่ยวกับ ASEAN Equity Disclosure Standards \_\_\_\_\_

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\*\*\*สำนักงานขอขอบคุณท่านที่ได้ให้ความร่วมมือในการแสดงความคิดเห็นในครั้งนี้\*\*



Securities and Exchange Commission (SEC Thailand)

# ASEAN Equity Disclosure Standards

-Foreign issuer-



09

## **ASEAN EQUITY DISCLOSURE STANDARDS**

### **I. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT, ADVISERS, AGENTS AND OTHER INDEPENDENT THIRD PARTIES**

- A. Directors and Senior Management<sup>1</sup>
  - 1. Provide the names, nationality, addresses and functions of the issuer's directors and senior management.
- B. Corporate Secretary
  - 1. Provide the name, professional qualifications and address of the secretary of the issuer (if any).
- C. Advisers
  - 1. Provide the names and addresses of –
    - (a) the issuer's principal bankers to the extent the issuer has a continuing relationship with such entities;
    - (b) the sponsor for listing or issue manager to the offer;
    - (c) the underwriter to the offer ; and
    - (d) the legal advisers to the offer (if any).
- D. Auditors
  - 1. Provide the names, addresses and professional qualifications (including any membership in a professional body) of the issuer's auditors for the preceding three years.
  - 2. Disclose both audit fee and non-audit fee of the issuer's auditors.
- E. Registrars and Agents
  - 1. Provide the names and addresses of the issuer's share registrars, transfer agents and receiving bankers for the securities being offered.
- F. Other Experts and Professionals
  - 1. Provide the names, addresses and professional qualifications (including any membership in a professional body) of any other persons connected with the public offering.

### **II. OFFER STATISTICS AND EXPECTED TIMETABLE**

- A. Offer Statistics
  - 1. For each method of offering, state the total amount of the offer, including the offer price or the method of determining the price and the number of securities to be offered.

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<sup>1</sup> "directors and senior management" :

This term includes

(a) the Issuer's directors,

(b) key executives, and

(c) any other such equivalent person as directors, managers or persons holding the four highest positions on the management level below the manager, all persons holding positions equivalent to the fourth highest person on the management level, including persons holding a manager position in the accounting or finance department or its equivalent, or higher.

## B. Method and Expected Timetable

For all offerings, and separately for each group of targeted potential investors, the prospectus shall state the following information to the extent applicable to the offering procedure:

1. The time period during which the offer will be open, and where and to whom purchase or subscription applications shall be addressed. Describe whether the purchase period may be extended or shortened, and the manner and duration of possible extensions or possible early closure or shortening of this period. Describe the manner in which the latter shall be made public. If the exact dates are not known when the prospectus is first filed or distributed to the public, describe arrangements for announcing the final or definitive date or period.
2. Method and time limits for paying up securities; where payment is partial, the manner and dates on which amounts due are to be paid.
3. Where applicable, methods of and time limits for —
  - (a) the delivery of the documents evidencing title to the securities being offered (including temporary documents of title, if applicable) to subscribers or purchasers; and
  - (b) the book-entry transfers of the securities being offered in favour of subscribers or purchasers.
4. In the case of pre-emptive purchase rights, the procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.
5. A full description of the manner in which results of the distribution of securities are to be made public, and where appropriate, the manner for refunding excess amount paid by applicants (including whether interest will be paid).

## III. KEY INFORMATION

### A. Selected Financial Data

1. The issuer shall provide from the audited financial statements provided in response to Part VIII. Financial Information, selected audited historical financial data regarding the issuer or, if the issuer is the holding company of a group, the group which shall be presented for the three most recent financial years (or such shorter period that the issuer has been in operation), in the same currency as the financial statements provided in response to Part VIII. Financial Information. If interim period financial statements are included, the selected financial data should be updated for that interim period.
2. The selected financial data presented shall include items generally corresponding to the following, except that the specific line items presented should be expressed in the same manner as the corresponding line items in the issuer's financial statements. Such data shall include, at a minimum, net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); net income (loss) from operations per share; income (loss) from continuing operations per share;

total assets; total liabilities; net assets or liabilities; capital stock (excluding long term debt and redeemable preferred stock); number of shares as adjusted to reflect changes in capital; dividends declared per share in respect of each class of shares in both the currency of the financial statements and the host country currency, including the formula used for any adjustments to dividends declared and giving particulars for each such class of shares; net income per share and diluted net income per share. Per share amounts must be determined in accordance with the body of accounting principles used in preparing the financial statements.

3. Where the financial statements provided in response to Part VIII Financial Information are prepared in a currency other than the currency of the host country, disclosure of the exchange rate between the financial reporting currency and the currency of the host country should be provided, using the exchange rate designated by the host country for this purpose, if any:
  - (a) at the latest practicable date;
  - (b) the highest and lowest exchange rates for each month during the previous six months; and
  - (c) for the three most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates between that financial reporting currency and the currency of the host country on the last day of each month during the period.

#### B. Capitalization and Indebtedness

1. A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, and secured and unsecured, indebtedness) as of a date no earlier than 60 days prior to the date of lodgment or submission of the prospectus shall be provided showing the issuer's, or if the issuer is the holding company of a group, the group's capitalization on an actual basis and, if applicable, as adjusted to reflect the sale of new securities being issued and the intended application of the net proceeds there from. Indebtedness also includes indirect and contingent indebtedness.

#### C. Reasons for the Offer and Use of Proceeds

1. The prospectus shall disclose the estimated net amount and percentage of the proceeds broken down into each principal intended use thereof. If the anticipated proceeds will not be sufficient to fund all the proposed purposes, the order of priority of such purpose should be given, as well as the amount and sources of other funds needed. Disclose also how the proceeds will be used pending their eventual utilization for the proposed purposes.
2. If the issuer has no specific plans for the proceeds, it should discuss the principal reasons for the offering.
3. Where the offer is not fully underwritten on a firm commitment basis, state the minimum amount which, in the reasonable opinion of the directors of the issuer, must be raised by the offer of securities.
4. If the proceeds are being used directly or indirectly to acquire assets, other than in the ordinary course of business, briefly describe the assets and their cost. If the assets have been or will be acquired from affiliates of the issuer or

their associates, disclose the persons from whom they will be acquired and how the cost to the issuer will be determined.

5. If the proceeds may or will be used to finance acquisitions of other businesses, give a brief description of such businesses and information on the status of the acquisitions.
6. If any material part of the proceeds is to be used to discharge, reduce or retire indebtedness, describe the interest rate and maturity of such indebtedness and, for indebtedness incurred within the past year, the uses to which the proceeds of such indebtedness were put.

D. Expenses of the Issue

The following information shall be provided:

1. The total amount of the discounts or commissions agreed upon by the underwriters or other placement or selling agents and the issuer or offeror shall be disclosed, as well as the percentage such commissions represent of the total amount of the offering and the amount of discounts or commissions per share.
2. A reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the securities to be listed or offered (in absolute terms and as a percentage of the total amount of the offer) and by whom the expenses are payable, if other than the issuer. If any of the securities are to be offered for the account of a selling shareholder, indicate the portion of such expenses to be borne by such shareholder. Indicate the amount of any expense specifically charged to the subscriber or purchaser of the securities being offered. The information may be given subject to future contingencies. If the amounts of any items are not known, estimates (identified as such) shall be given.

E. Risk Factors

1. The prospectus shall prominently disclose risk factors that are specific to the issuer and its industry and had materially affected or could materially affect, directly or indirectly, the issuer's financial position and results and business operations, and investments by holders of securities in the issuer, in a section headed "Risk Factors". Issuers are encouraged, but not required, to list the risk factors in the order of their priority to the issuer. The Risk Factors section is intended to be a summary of more detailed discussion contained elsewhere in the prospectus.

#### **IV. INFORMATION ON THE ISSUER**

A. History and Development of the Issuer

The following information shall be provided:

1. The website address of the issuer, if any
2. The legal and commercial name of the issuer.
3. The date of incorporation and the length of life of the issuer, except where indefinite.
4. The domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation and the address and telephone number of its registered office (or principal place of business if different from



its registered office). Provide the name and address of the issuer's agent in the host country, if any.

5. The length of time for which the business of the issuer, or if the issuer is the holding company of a group, of the group has been carried on and the important events in the development of the issuer's business, e.g. information concerning the nature and results of any material reclassification, merger or consolidation of the issuer or any of its significant subsidiaries; acquisitions or dispositions of material assets other than in the ordinary course of business; any material changes in the mode of conducting the business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the issuer or significant subsidiaries.
6. A description, including the amount invested, of the issuer's material capital expenditures and divestitures (including interests in other companies), since the beginning of the issuer's last three financial years to the date of the prospectus.
7. Information concerning the material capital expenditures and divestitures currently in progress, including the distribution of these investments geographically (home and abroad) and the method of financing (internal or external).
8. An indication of any public takeover offers by third parties in respect of the issuer's shares or by the issuer in respect of other companies' shares which have occurred from the beginning of the last financial year to the latest practicable date. The price or exchange terms attaching to such offers and the outcome thereof are to be stated.

#### B. Business Overview

The information required by this item may be presented on the same basis as that used to determine the issuer's business segments under the body of accounting principles used in preparing the financial statements. The following information shall be provided:

1. A description of the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed for each of the last three financial years. Indicate any significant new products and/or services that have been introduced between the beginning of the period comprising the three most recent completed financial years and the latest practicable date and, to the extent the development of new products or services has been publicly disclosed, give the status of development.
2. A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years.
3. A description of the seasonality of the issuer's main business.
4. A description of the sources and availability of raw materials, including a description of whether prices of principal raw materials are volatile.

5. A description of the marketing channels used by the issuer, including an explanation of any special sales methods, such as installment sales.
  6. Summary information regarding the extent to which the issuer is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to the issuer's business or profitability.
  7. The basis for any statements made by the issuer regarding its competitive position shall be disclosed.
  8. A description of the material effects of government regulations on the issuer's business, identifying the regulatory body.
- C. Organizational Structure
1. If the issuer is part of a group, include a brief description of the group and the issuer's position within the group. Provide a listing of the issuer's significant subsidiaries, including name, country of incorporation or residence, principal place of business, principal activities, proportion of ownership interest and, if different, proportion of voting power held.
- D. Property, Plants and Equipment
1. The issuer shall provide information regarding any material tangible fixed assets, including leased properties, and any major encumbrances thereon, including a description of the size and uses of the property; productive capacity and extent of utilization of the issuer's facilities; how the assets are held; the products produced; and the location. Also describe any regulatory requirements and environmental issues that may materially affect the issuer's utilization of the assets. With regard to any material plans to construct, expand or improve facilities, describe the nature of and reason for the plan, an estimate of the amount of expenditures including the amount of expenditures already paid, a description of the method of financing the activity, the estimated dates of start and completion of the activity, and the increase of production capacity anticipated after completion.

## **V. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

1. Discuss the issuer's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required, including the causes of material changes from year to year in financial statement line items, to the extent necessary for an understanding of the issuer's business as a whole. Information provided also shall relate to all separate segments of the issuer. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the issuer's financial condition, changes in financial condition and results of operation.
- A. Operating Results
1. Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so

affected. Describe any other significant component of revenue or expenses necessary to understand the issuer's results of operations.

2. To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services between corresponding periods.
3. Describe the impact of inflation, if material. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the issuer's business shall be disclosed.
4. Provide information regarding the impact of foreign currency fluctuations on the issuer, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments
5. Provide information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations or investments by host country shareholders.

B. Liquidity and Capital Resources

The following information shall be provided:

1. Information regarding the issuer's liquidity (both short and long term), including:
  - (a) a description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements, or, if not, how it proposes to provide the additional working capital needed;
  - (b) an evaluation of the sources and amounts of the issuer's cash flows from operating, investing and financing activities in respect of each financial year required to be included in the prospectus and, if interim cash flow statement has been included in the prospectus, the period covered by the interim cash flow statement. This includes the nature and extent of any legal, financial, or economic restrictions on the ability of subsidiaries to transfer funds to the issuer in the form of cash dividends, loans or advances and the impact such restrictions have had or are expected to have on the ability of the issuer to meet its cash obligations.
  - (c) information on the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use. Foreign borrowings should be separately identified with the corresponding foreign currencies amount. Disclose gearing ratios for the period under review.  
[For extent to which the borrowings are fixed, see para. 4 below.]

2. If the issuer or any other entity in the group is in breach of any of the terms and conditions or covenants associated with any credit arrangement or bank loan which could materially affect the issuer's financial position and results or business operations, or the investments by holders of securities in the issuer—
    - (a) a statement of that fact;
    - (b) details of the credit arrangement or bank loan; and
    - (c) details of any action taken or to be taken by the issuer or other entity in the group, as the case may be, to rectify the situation (including the status of any restructuring negotiations or agreement, if applicable).
  3. A statement as to whether there have been any defaults on payments of either interest and/or principal sums in respect of any borrowings throughout the past one financial year and the subsequent financial period thereof as at the latest practicable date.
  4. Information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also should include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.
  5. Information regarding the issuer's material commitments for capital expenditures as of the latest practicable date and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.
- C. Research and Development, Patents and Licenses, etc.
1. Provide a description of the issuer's research and development policies for the last three years, where it is significant, including the amount spent (and such amount as a percentage of the net sales or revenue) during each of the last three financial years on issuer-sponsored research and development activities.
- D. Trend Information and Profit Forecast or Profit Estimate
1. The issuer should discuss, for at least the current financial year, the business and financial prospects and identify any significant recent trends in production, sales and inventory and costs and selling prices since the latest financial year. The issuer also should discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition. If there are no such trends, uncertainties, demands, commitments or events, provide an appropriate statement to that effect.
  2. Discuss the state of the order book since the end of the most recent period for which annual or interim financial statements have been provided in the prospectus Where such information is not relevant to the business of the issuer; provide an appropriate statement to that effect and the reason for this.

3. Where a profit forecast is disclosed, state the extent to which projected sales or revenues are based on secured contracts or orders, and the reasons for expecting to achieve the projected sales or revenues and profit, and discuss the impact of any likely change in business and operating conditions on the forecast. Where a profit forecast is disclosed, the issuer shall properly state the reasonable assumptions, including explanation of calculation methods on setting up such assumptions.
4. Where a profit forecast or profit estimate is disclosed, state all principal assumptions, if any, upon which the directors of the issuer have based their profit forecast or profit estimate, as the case may be.

## **VI. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES**

### **A. Directors and Senior Management**

The following information shall be disclosed with respect to the issuer's directors and senior management, and any employees such as scientists, researchers or designers upon whose work the issuer is dependent:

1. Name, business experience, educational and professional qualifications, functions and areas of experience or responsibility in the issuer.
2. Principal business activities performed outside the issuer (including, in the case of directors, other principal directorships at present and in the last five years).
3. Date of birth or age (if required to be reported in the home country or otherwise publicly disclosed by the issuer).
4. The nature of any family relationship between (a) any of the persons named above; and (b) any of the persons named above and any major shareholder<sup>2</sup> of the issuer.
5. Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to above was selected as a director or member of senior management of the issuer.
6. Provide the management reporting structure of the issuer (delegation of power).

### **B. Compensation**

Provide the following information for the last full financial year for the issuer's directors and members of its administrative, supervisory or management bodies:

1. The amount of compensation paid, and benefits in kind granted, to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. Disclosure of directors' compensation is required on an individual basis, while members of its administrative, supervisory or management bodies' compensation is required on lump sum basis (aggregate amount). The standard also covers contingent or deferred compensation accrued for the year, even if the compensation is payable at a later date. If any portion of the compensation was paid (a) pursuant to a bonus or profit-sharing plan, provide a brief description of the plan and the

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<sup>2</sup> "major shareholder" : This term refers to a shareholder that is the beneficial owner of 5% or more of any class of the issuer's voting securities (unless the issuer is required to disclose a lesser percentage in its home country, in which case that lesser percentage applies).

basis upon which such persons participate in the plan; or (b) in the form of stock options, provide the title and amount of securities covered by the options, the exercise price, the purchase price (if any), and the expiration date of the options.

2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.

#### C. Board Practices

The following information shall be given with respect to, unless otherwise specified, the issuer's directors, and members of its administrative, supervisory or management bodies.

1. Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.
2. Details of directors' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement. For a service contract with a fixed term, state the term of each such contract, the unexpired term and the name of the relevant director.
3. Details relating to the issuer's audit committee, nomination committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.

#### D. Employees

1. Provide either the number of employees at the end of the period or the average for the period for each of the past three financial years (and changes in such numbers, if material) and, if possible, a breakdown of persons employed by main category of activity and geographic location. Also disclose any significant change in the number of employees, and information regarding the relationship between management and labor unions. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on an average during the most recent financial year.

#### E. Share Ownership

1. With respect to the issuer's directors and members of its administrative, supervisory or management bodies, provide information as to their share ownership in the issuer as of the latest practicable date and immediately after the offer (including disclosure on an individual basis of the number of shares and percent of shares outstanding of that class, and whether they have different voting rights or an appropriate negative statement) held directly, or deemed to be held, by the persons and options granted to them on the issuer's shares. Information regarding options shall include: the title and amount of securities called for by the options; the exercise price; the purchase price, if any; the period during which the option is exercisable and the expiration date of the options.
2. Disclose any contractual undertaking provided by any party (including but not limited to the issuer's directors and members of its administrative, supervisory or management bodies) to observe a moratorium on the transfer or disposal of his interest in the shares of the issuer.

## VII. MAJOR SHAREHOLDERS, RELATED PARTY TRANSACTIONS AND CONFLICTS OF INTERESTS

### A. Major Shareholders

1. The following information shall be provided regarding the issuer's major shareholders:
  - (a) Provide the names of the major shareholders, and the number of shares and the percentage of outstanding shares of each class owned by each of them as of the most recent practicable date and immediately after the offer, or an appropriate negative statement if there are no major shareholders.
  - (b) Disclose any significant change in the percentage ownership held by any major shareholders during the past three years.
  - (c) Indicate whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.
2. Information shall be provided as to the portion of each class of securities held in the host country and the number of record holders in the host country.
3. To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled by another corporation(s), by any foreign government or by any other natural or legal person(s) severally or jointly, and, if so, give the name(s) of such controlling corporation(s), government or other person(s), and briefly describe the nature of such control, including the amount and proportion of capital held giving a right to vote.
4. Describe any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
5. Describe any arrangements for involving the directors and employees of the group in the capital of the issuer, including any arrangement that involves the issue or grant of options or shares or securities of the issuer.

### B. Related Party Transactions

1. Provide the information required below for the period since the beginning of the issuer's preceding three financial years up to the date of the prospectus, with respect to transactions or loans between the issuer and (a) enterprises that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control<sup>3</sup> with, the issuer; (b) associates; (c) individuals owning, directly or indirectly, an interest in the voting power of the issuer that gives them significant influence<sup>4</sup> over the issuer, and close members of any such individual's family; (d) key management personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of companies and close members of such individuals' families;

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<sup>3</sup> "common control" : Two or more entities or businesses are under common control if they are ultimately controlled by the same party or parties and the control is not transitory. A party is or a group of parties shall be regarded as controlling an entity or business when the party or group of parties, as a result of contractual arrangements, has or collectively have the power to govern its financial and operating policies so as to obtain benefits from its activities.

<sup>4</sup> "significant influence" : A person is deemed to have significant influence over a corporation if he is a controlling shareholder of the corporation.

and (e) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in (c) or (d) or over which such a person is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the issuer and enterprises that have a member of key management in common with the issuer. Close members of an individual's family are those that may be expected to influence, or be influenced by, that person in their dealings with the issuer. An associate is an unconsolidated enterprise in which the issuer has a significant influence or which has significant influence over the issuer. Significant influence over an enterprise is the power to participate in the financial and operating policy decisions of the enterprise but is less than control over those policies. [Please refer to the Appendix for more details on the percentage of shareholding giving rise to a presumption of significant influence.]

2. The nature and extent of any transactions or presently proposed transactions which are material to the issuer or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer or any of its parent or subsidiaries was a party.
3. The amount of outstanding loans (including guarantees of any kind) made by the issuer or any of its parent or subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.
4. For each transaction referred to in Part VII.B.Related Party Transaction —
  - (a) that has been completed or will be completed at or before the close of the offer, disclose whether or not the transaction has been or will be carried out on an arm's length basis;
  - (b) that will continue after the close of the offer, disclose —
    - (i) whether or not the transaction has been carried out on an arm's length basis; and
    - (ii) the procedure undertaken or which will be undertaken to ensure that such transaction will be carried out on an arm's length basis; or
  - (c) that has been proposed, disclose the procedure which will be undertaken to ensure that such transaction will be carried out on an arm's length basis.
5. For each loan referred to in Part VII.B.Related Party Transaction —
  - (a) that has been repaid or will be repaid at or before the close of the offer, disclose whether or not the loan was made on an arm's length basis;
  - (b) that is to be repaid, whether partly or wholly, after the close of the offer, disclose —
    - (i) whether or not the loan was made on an arm's length basis; and
    - (ii) when the loan is intended or required to be repaid; or



- (c) that has been proposed, disclose the procedure which will be undertaken to ensure that such loan will be made on an arm's length basis.
  - 6. Where transactions or loans referred to in Part VII.B. Related Party Transaction are similar and recurring in nature or could otherwise be grouped in a meaningful manner, the information required with respect to Part VII.B. Related Party Transaction should be provided on an aggregate basis, if the aggregate of these transactions or loans are material in the context of the offer.
- C. Conflict of Interests
- 1. Where a director or controlling shareholder<sup>5</sup> of the issuer or his associate has an interest in any entity carrying on the same business or dealing in similar products as the issuer or, if the issuer is the holding company of a group, as the group, disclose —
    - (a) the name of that entity;
    - (b) the name of the director or controlling shareholder involved;
    - (c) the nature and extent of his interest in that entity and the extent to which he is involved in the management of that entity either directly or indirectly; and
    - (d) whether any conflict of interests thereby arising has been or is to be resolved or mitigated and, if so, how it has been or is proposed to be resolved or mitigated.
- D. Interests of Experts, Counsel, Underwriters and Financial Advisers
- 1. If any of the named experts, counselors, underwriter or other financial adviser was employed on a contingent basis, owns an amount of shares in the issuer or its subsidiaries which is material to that person, has a material, direct or indirect economic interest in the issuer or that depends on the success of the offering, or otherwise has a material relationship with the issuer, provide a brief description of the nature and terms of such contingency, interest or relationship.

## **VIII. FINANCIAL INFORMATION**

- A. Consolidated Statements and Other Financial Information
- 1. The prospectus must contain comparative consolidated financial statements that cover the latest three financial years (or such shorter period that the issuer has been in operation). The last year of audited financial statements may not be older than 15 months before the date of submission of prospectus.
  - 2. Where a common control combination involving the issuer has occurred at any time during the latest three financial years, the financial statements to be provided under paragraph 1 of this Part should be prepared to show the combined financial information of the issuer and the common control entities or businesses as if the common control combination had taken place at the

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<sup>5</sup> "controlling shareholder" : This term, in relation to a corporation, a person who has an interest in voting shares of the corporation of the percentage of more than 10% of the total votes to all voting shares of the corporation.

beginning of the latest three financial years or at the time when the common control entities or businesses first came under common control, whichever date is the later. For the purpose of this item, "common control combination" means a business combination in which all the combining entities or businesses are under common control.

3. The financial statements to be provided under paragraph 1 of this Part must be:
  - (a) prepared in accordance with the International Financial Reporting Standards and International Accounting Standards, or such comprehensive body of accounting standards as the International Accounting Standards Board may adopt from time to time (referred to in this Part as IFRS); and
  - (b) audited in accordance with the International Standards on Auditing, or such comprehensive body of auditing standards as may be adopted by the International Auditing and Assurance Standards Board from time to time (referred to in this Item as ISA).
4. The financial statements to be provided under paragraph 1 of this Part must be accompanied by –
  - (a) an audit report or audit reports covering each of the financial statements; and
  - (b) a statement identifying the auditors who audited the financial statements and the membership or memberships of each auditor in any professional body or bodies.

The financial statements to be provided under paragraph 1 of this Part shall comprise such items as may be required by IFRS.

5. The last year of audited financial statements may not be older than such date as may be required by each host country.
6. The prospectus should contain such consolidated interim financial statements which must be prepared in accordance with IFRS as may be required by –
  - 6.1 If the date of submission of the prospectus is more than five months after the end of the most recent completed financial year for which audited financial statements have been prepared, provide the interim financial statements of the issuer or, where the issuer is a holding company, of the group in accordance with the following paragraphs.
  - 6.2 If the date of submission of the prospectus is more than five months but equal or less than eight months: interim financials for at least the first three months of the current financial year is required.
  - 6.3 If the date of submission of the prospectus is more than eight months but equal or less than eleven months: interim financials for at least the first six months of the current financial year is required;
  - 6.4 If the date of submission of the prospectus is more than eleven months but equal or less than fifteen months: interim financials for at least the first nine months of the current financial year (or the previous financial year as the case may be) is required.

(interim financial statement has to be reviewed by the auditor, but need not be audited)

7. In the case of transactions that might affect the assets and liabilities and earnings of the issuer, provide such pro forma financial<sup>6</sup> information for such period and in such form as may be required by each host country to show how the transaction might have affected the assets and liabilities and earnings of the issuer.

Providing of pro forma (forecast) financial statement in Thailand is optional for the issuer. However, if the issuer would like to provide it, the issuer shall properly state the reasonable assumptions, including explanation of calculation methods on setting up such assumptions.

In case of business combination involving entities under common control, the best practice guideline specifies that consolidated financial statements shall include the results of each of the combined entities since the date when such entities first came under the control of the controlling party, regardless of the date of such combination. Such consolidated financial statements shall be audited by auditors on SEC's approved list.

In case of acquisition of entities not previously under common control, the consolidated financial statement shall include operating results of such entities from the beginning of the year such entities are acquired to illustrate full year operating results. Such consolidated financial statement does not need to be audited, but shall be verified by 3rd parties, such as the financial advisors.

8. Where there has been any material change to the issuer's accounting policies, provide a summary of the material change and the reason for and quantitative impact of such change on the financial results of the issuer or, if the issuer is a holding company, of the group for each of the financial years for which financial statements are provided pursuant to paragraph 1 of this Part.
9. Provide information on any legal or arbitration proceedings, including those relating to bankruptcy, receivership or similar proceedings which may have, or have had in the 12 months immediately preceding the date of prospectus, significant effects on the issuer's financial position or profitability. This includes governmental proceedings pending or known to be contemplated.
10. Describe the issuer's policy on dividend distributions or, if it does not have a fixed policy, state so.

#### B. Significant Changes

1. Disclose whether or not any significant change has occurred which may have a material effect on the financial position and results of the issuer since the date of the annual financial statements, and/or since the date of the most recent interim financial statements, if any, included in the prospectus. If there is no such change, provide an appropriate negative statement.

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<sup>6</sup> The term "pro forma financial statement" means projected / forecasted financial statement only.

## IX. THE OFFER AND LISTING

### A. Offer and Listing Details

1. If there is not an established market for the securities, the prospectus shall contain information regarding the manner of determination of the offering price as well as of the exercise price of warrants and the conversion price of convertible securities, including who established the price or who is formally responsible for the determination of the price, the various factors considered in such determination and the parameters or elements used as a basis for establishing the price.
2. If the issuer's shareholders have pre-emptive purchase rights and where the exercise of the right of pre-emption of shareholders is restricted, withdrawn or waived, the issuer shall indicate the basis for the issue price if the issue is for cash, together with the reasons for such restriction, withdrawal or waiver and the beneficiaries of such restriction, withdrawal or waiver if intended to benefit specific persons.
3. Information regarding the price history, if any, of the stock to be offered or listed shall be disclosed as follows:
  - (a) for the three most recent full financial years: the annual highest and lowest market prices;
  - (b) for the two most recent full financial years and any subsequent period: the highest and lowest market prices for each full financial quarter;
  - (c) for the most recent six months: the highest and lowest market prices for each month;
  - (d) for pre-emptive issues, the market prices for the first trading day in the most recent six months, for the last trading day before the announcement of the offering and (if different) for the latest practicable date prior to publication of the prospectus.

Information shall be given with respect to the market price in the host market and the principal trading market outside the host market.

4. If significant trading suspensions occurred in the prior three years preceding the latest practicable date, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.
5. State the type and class of the securities being offered or listed and furnish the following information:
  - (a) Indicate whether the shares are registered shares or bearer shares and provide the number of shares to be issued and to be made available to the market for each kind of share. The nominal par or equivalent value should be given on a per share basis and, where applicable, a statement of the minimum and maximum offer price. Describe the coupons attached, if applicable.
  - (b) Describe arrangements for transfer and any restrictions on the free transferability of the shares.
6. If the rights evidenced by the securities being offered or listed are or may be materially limited or qualified by the rights evidenced by any other class of securities or by the provisions of any contract or other documents, include

information regarding such limitation or qualification and its effect on the rights evidenced by the securities to be listed or offered.

7. With respect to securities other than common or ordinary shares to be listed or offered, outline briefly the rights evidenced thereby.
  - (a) If subscription warrants or rights are to be listed or offered, state: the title and amount of securities called for; the amount of warrants or rights outstanding; provisions for changes to or adjustments in the exercise price; the period during which and the price at which the warrants or rights are exercisable; and any other material terms of such warrants or rights.
  - (b) Where convertible securities or stock purchase warrants to be listed or offered are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall include whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in the notice of redemption or call; the expiration or termination date of the warrants; the kind, frequency and timing of notice of the redemption or call, including where the notice will be published; and, in the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call.

#### B. Plan of Distribution

1. To the extent known to the issuer, indicate whether major shareholders, directors or members of the issuer's management, supervisory or administrative bodies intend to subscribe in the offering, or whether any person intends to subscribe for more than 5% of the offering.
2. Identify any group of targeted potential investors to whom the securities are offered. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.
3. If securities are reserved for allocation to any group of targeted investors, including, for example, offerings to existing shareholders, directors, or employees and past employees of the issuer or its subsidiaries, provide details of these and any other preferential allocation arrangements.
4. Indicate whether the amount of the offering could be increased, such as by the exercise of an underwriter's over-allotment option or "greenshoe," and state the exercise period and amount under such option.
5. Indicate the amount, and outline briefly the plan of distribution, of any securities that are to be offered otherwise than through underwriters. If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement or understanding with such entities. If known, identify the broker(s) or dealer(s) that will participate in the offering and state the amount to be offered through each broker and dealer.

6. If the securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.
7. If simultaneously or almost simultaneously with the creation of shares for which admission to official listing is being sought, shares of the same class are subscribed for or placed privately or if shares of other classes are created for public or private placing, details are to be given of the nature of such operations and of the number and characteristics of the shares to which they relate.
8. Unless otherwise described under the response to Part X.C. Material Contracts, describe the features of the underwriting relationship together with the amount of securities being underwritten by each underwriter in privity of contract with the issuer or selling shareholders. The foregoing information should include a statement as to whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is an agency or the type of "best efforts" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public.

#### C. Markets

1. The issuer shall disclose all stock exchanges and other regulated markets on which the securities to be offered or listed are traded.
2. When an application for admission to any exchange and/or regulated market is being or will be sought, this must be mentioned with the identity of the exchange, without creating the impression that the listing necessarily will be approved. If known, the dates on which the shares will be listed and dealt in should be given.

#### D. Selling Shareholders

The following information shall be provided:

1. The name and address of the person or entity offering to sell the shares, the nature of any position, office or other material relationship that the selling shareholder has had within the past three years with the issuer or any of its predecessors or affiliates.
2. The number and class of securities being offered by each of the selling shareholders, and the percentage of the existing and the enlarged equity capital. The amount and percentage of the securities for each particular type of securities beneficially held by the selling shareholder as of the latest practicable date and immediately after the offering shall be specified.

#### E. Dilution

The following information shall be provided:

1. Where there is a substantial disparity between the public offering price and the effective cash cost to directors or senior management, major shareholders or affiliated persons, of equity securities acquired by them in transactions during the past three years, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offering and the effective cash contributions of such persons.

2. Disclose the amount and percentage of immediate dilution resulting from the offering, computed as the difference between the offering price per share and the net book value per share for the equivalent class of security, as of the latest balance sheet date after adjusting for the effects of the offer, and any disposal or acquisition which occurred between the latest balance sheet date and the date of the prospectus, on the net asset value per share.
3. Where the information required under Item IX.E. Dilution has been prepared using certain assumptions and after making certain adjustments on a pro forma basis, state such fact.
4. In the case of a subscription offering to existing shareholders, disclose the amount and percentage of immediate dilution if they do not subscribe to the new offering.

## **X. ADDITIONAL INFORMATION**

### **A. Share Capital**

The following information shall be given as of the date of the most recent balance sheet included in the financial statements and as of the latest practicable date:

1. The amount of issued capital and, for each class of share capital: (a) the number of shares authorized; (b) the number of shares issued and fully paid and issued but not fully paid; (c) the par value per share, or that the shares have no par value; and (d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the past three years that fact should be stated.
2. If there are shares not representing capital, the number and main characteristics of such shares shall be stated.
3. Indicate, if any, the number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.
4. Where there is authorized but unissued capital or an undertaking to increase the capital, for example, in connection with warrants, convertible obligations or other outstanding equity-linked securities, or subscription rights granted, indicate: (i) the amount of outstanding equity-linked securities and of such authorized capital or capital increase and, where appropriate, the duration of the authorization; (ii) the categories of persons having preferential subscription rights for such additional portions of capital; and (iii) the terms, arrangements and procedures for the share issue corresponding to such portions.
5. The persons to whom any capital of any member of the group is under option or agreed conditionally or unconditionally to be put under option, including the title and amount of securities covered by the options; the exercise price; the purchase price, if any; the period during which the options are exercisable, and the expiration date of the options, or an appropriate negative statement. Where options have been granted or agreed to be granted to all the holders of shares or debt securities of the issuer or of any entity in the group, or of any class thereof, or to employees under an

employees' share scheme, it will be sufficient so far as the names are concerned, to record that fact without giving names.

6. A history of share capital for the last three years identifying the events during such period which have changed the amount of the issued capital and / or the number and classes of shares of which it composed, together with a description of changes in voting rights attached to the various classes of shares during that time. Details should be given of the price and terms of any issue including particulars of consideration where this was other than cash (including information regarding discounts, special terms or installment payments). If there are no such issues, an appropriate negative statement must be made. The reason for any reduction of the amount of capital and the ratio of capital reductions also shall be given.
7. An indication of the resolutions, authorizations and approvals by virtue of which any shares have been or will be created and / or issued, the nature of the issue and amount thereof and the number of shares which have been or will be created and / or issued, if predetermined.

#### B. Memorandum and Articles of Association

The following information shall be provided:

1. Indicate the register and the entry number therein, if applicable, and describe the issuer's objects and purposes and where they can be found in the memorandum and articles.
2. With respect to directors, provide a summary of any provisions of the issuer's articles of association or charter and bylaws with respect to: (a) a director's power to vote on a proposal, arrangement or contract in which the director is interested; (b) the directors' power (if any), in the absence of and with an independent quorum, to vote compensation (including pension or other benefits) to themselves or any members of their body; (c) borrowing powers exercisable by the directors and how such borrowing powers can be varied; (d) retirement or non-retirement of directors under an age limit requirement; and (e) number of shares, if any, required for director's qualification.
3. Describe the rights, preferences and restrictions attaching to each class of the shares, including: (a) dividend rights, including the time limit after which dividend entitlement lapses and an indication of the party in whose favor this entitlement operates; (b) voting rights, including whether directors stand for reelection at staggered intervals and the impact of that arrangement where cumulative voting is permitted or required; (c) rights to share in the issuer's profits; (d) rights to share in any surplus in the event of liquidation; (e) redemption provisions; (f) sinking fund provisions; (g) liability to further capital calls by the issuer; and (h) any provision discriminating against any existing or prospective holder of such securities as a result of such shareholder owning a substantial number of shares.
4. Describe what action is necessary to change the rights of holders of the stock, indicating where the conditions are more significant than is required by law.



5. Describe the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are convoked, including the conditions of admission.
6. Describe any limitations on the rights to own securities, including the rights of nonresident or foreign shareholders to hold or exercise voting rights on the securities imposed by foreign law or by the charter or other constituent document of the issuer or state that there are no such limitations if that is the case.
7. Describe briefly any provision of the issuer's articles of association, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer and that would operate only with respect to a merger, acquisition or corporate restructuring involving the issuer (or any of its subsidiaries).
8. Indicate the bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.
9. With respect to items 2 through 8 above, if the law applicable to the issuer in these areas is significantly different from that in the host country, the effect of the law in these areas is to be explained.
10. Describe the material conditions imposed by the memorandum and articles of association governing changes in the capital.

#### C. Material Contracts

1. Provide a summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding the date of submission of the prospectus, including dates, parties, general nature of the contracts, terms and conditions, and amount of any consideration passing to or from the issuer or any other member of the group.

#### D. Exchange Controls

Describe any governmental laws, decrees, regulations or other legislation of the home country of the issuer which may affect:

1. the import or export of capital, including the availability of cash and cash equivalents for use by the issuer's group.
2. the remittance of dividends, interest or other payments to nonresident holders of the issuer's securities.

#### E. Taxation

1. The issuer shall provide information regarding taxes (including withholding provisions) to which shareholders may be subject. Information should be included as to whether the issuer assumes responsibility for the withholding of tax at the source and regarding applicable provisions of any reciprocal tax treaties between the home and host countries, or a statement, if applicable, that there are no such treaties.

#### F. Dividends and Paying Agents

1. Disclose any dividend restrictions, the date on which the entitlement to dividends arises, if known, and any procedures for shareholders to claim dividends. Identify the financial organizations which, at the time of admission

of shares to official listing, are the paying agents of the issuer in the countries where admission has taken place or is expected to take place.

G. Statement by Experts

1. Where a statement or report attributed to a person as an expert is included in the prospectus, provide such person's name, address and qualifications, the date on which the statement or report was made and a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorized the contents of that part of the prospectus.

H. Sign offs or consents from persons advising the issuer in the preparation of the prospectus

1. Where a person is named in the prospectus as financial advisor to the offer, include a statement that the person has given, and has not withdrawn, his written consent to being named in the prospectus as financial advisor, as the case may be, to the offer.

I. Documents for Public Inspection

1. The issuer shall provide an indication of where the documents (or copies thereof) concerning the issuer which are referred to in the prospectus may be inspected. Exhibits and documents on display generally should be translated into English, or a summary in English should be provided. These documents include:

- (a) the constituent documents of the issuer;
- (b) every material contract referred to in the prospectus or, where the contract is not reduced into writing, a memorandum giving full particulars thereof;
- (c) the directors' service contracts referred to in the prospectus;
- (d) every report, memorandum, letter, valuation, statement or other document by any expert any part of which is included or referred to in the prospectus;
- (e) if the issuer is not the holding company of a group, the audited financial statements of the issuer for each of the financial years for which audited financial statements of the issuer have been included in the prospectus;
- (f) if the issuer is the holding company of a group, the respective audited financial statements of the entities or businesses in the group (being entities or businesses which have audited financial statements) for each of the financial years for which audited financial statements of the issuer have been included in the prospectus;
- (g) if the issuer is the holding company of a pro forma group and pro forma financial statements have been included in the prospectus, the respective audited financial statements of the entities or businesses in the pro forma group (being entities or businesses which have audited financial statements), other than the entities or businesses referred to in sub-paragraph (f), for the financial year in respect of which pro forma financial statements have been included in the prospectus;
- (h) any interim financial statements of the issuer, group or pro forma group, as the case may be, which are included in the prospectus.

J. Subsidiary Information

1. Certain information relating to the issuer's subsidiaries must be provided in some countries, if the information is not otherwise called for by the International Financial Reporting Standards and the International Accounting Standards, or such comprehensive body of accounting standards as the International Accounting Standards Board may adopt from time to time which is used in preparing the financial statements.
2. Certain information refers to nature of subsidiary's business

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