

## Legal Express

# Thailand NVDRs

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The Office of the Securities and Exchange Commission (the “SEC”) and the Stock Exchange of Thailand (the “SET”) introduced Non-Voting Depository Receipts (“NVDRs”) in 2001 with a view to further increasing trading in Thai securities as well as addressing certain issues encountered by some investors under the Thai Trust Fund (“TTF”) scheme. For example, investors in NVDRs can now be either Thai or non-Thai.

As, non-Thai investors may be restricted from investing in certain Thai listed companies in excess of applicable foreign shareholding limitations, NVDRs were introduced as an investment alternative for non-Thai investors with an aim of increasing foreign investment in shares, transferable subscription rights (“TSRs”), and warrants of Thai listed companies. Similar to the TTF scheme, NVDRs have played an important role in narrowing the price difference between trading of shares on the “local” and “foreign” boards of the SET. Under Thai laws, Thai NVDR Co., Ltd. (“**Thai NVDR Company**”), a Thai company and wholly owned by the SET, will be regarded as the registered holder of the Eligible Securities\*.

## NVDRs Transactions

Considered as listed securities, NVDRs are comparable to the underlying Eligible Securities in terms of liquidity and price. By investing in NVDRs, investors will be entitled to all financial benefits attached to the underlying securities, such as dividends and rights, as if the investors invested in such securities themselves. Thailand Securities Depository Co., Ltd. (“TSD”), a company majority owned by the SET, operates as a platform for deposit, withdrawal, clearing and registration of securities and acts as the registrar and depository for NVDRs.

To purchase NVDRs, investors shall instruct a broker to purchase the Eligible Securities by specifying in their trading orders that they be of NVDR type, in the same way that they would normally instruct their broker to purchase listed securities on the SET. When instructed by investors, Thai NVDR Company will purchase and hold and/or sell the Eligible Securities on behalf of the investors. After the orders are matched, the Eligible Securities will be credited to Thai NVDR Company, and NVDRs will correspondingly be issued and credited to the investors’

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\* Eligible Securities means securities in which Thai NVDR Company may invest. These include ordinary and preferred shares, TSRs and warrants that have been, or are expected to be, listed on the SET.

accounts on the settlement date (which is currently on T+2) on which the relevant Eligible Securities are delivered to the Thai NVDR Company. Sales of NVDRs and the corresponding Eligible Securities will follow an identical inverse procedure.

Brokerage commission and fee for NVDRs certificate will be charged on a normal basis at the same rate as that of the underlying securities.

## Entitlements

Principal financial-related entitlements attached to the Eligible Securities, e.g. dividends or rights, will be passed from Thai NVDR Company to holders of the corresponding NVDRs as if they were registered holders of the Eligible Securities. In addition, non-Thai investors may seek to convert NVDRs into foreign-registered shares by notifying their brokers or custodians of their intention to do so. Conversion will be possible if and when sufficient room is available under the relevant company's foreign shareholding limit. If such foreign room has been reached, NVDRs will be queued to exchange for foreign-registered shares, and non-Thai investors shall still be entitled to the full financial benefits during the queuing period.

However, as a matter of policy, voting rights are excluded and will not normally be exercised by Thai NVDR Company except in the event whereby a shareholders' meeting is called to consider de-listing, in which case Thai NVDR Company will, pursuant to its current policy, abstain from exercising its voting rights.

Whilst the Bank of Thailand has granted its approval for Thai NVDR Company to hold shares in any financial institution in excess of 10% but below 25% or 35% of their paid-up capital, no investor may hold shares or a combination of shares and NVDRs of a financial institution or its parent company (whether directly and indirectly) in excess of 10% of its total issued shares, except in the manner prescribed in the Financial Institution Business Act B.E. 2551 (A.D. 2008) (as amended). Thai NVDR Company will, therefore, not accept and consequently not pay to an investor any dividend or benefit arising in respect of the excess NVDRs held by such investor. In addition, Thai NVDR Company will also notify the investor to dispose of the excess shares or NVDRs within 90 days from the date on which such excess shares or NVDRs are acquired.

## Regulatory Compliance

Investors in NVDRs are required to comply with the following requirements:

### 5% Report

Investors are required to file with Thai NVDR Company a report in a form prescribed by Thai NVDR Company within three business days of (a) any acquisition or disposition which takes their respective holding of NVDRs representing shares, either singly or in combination with shares, through any multiple of 5 per cent of the total voting rights of the target company or (b) any acquisition of NVDRs representing convertible securities, either singly or in combination with the convertible securities, and if as a result of such holding such investors would (treating each NVDR as the equivalent of one warrant or TSR) increase the number of the shares and NVDRs representing shares through any multiple of 5 per cent of the total voting rights of a target company. The number of NVDRs and underlying shares held by related person(s) and/or concert party (ies) of the investors will be aggregated for the purpose of this computation. Failure to comply with this obligation results in the investor being liable for the penalty in the manner prescribed in the Securities and Exchange Act B.E. 2535 (A.D. 1992) (as amended) and the Financial Institution Business Act B.E. 2551(A.D. 2008) (as amended).

## Takeover Measures

Under the terms and conditions of the NVDRs, every investor investing in NVDRs is obliged to agree in advance with Thai NVDR Company that no investor may acquire or hold any combination of the NVDRs and the underlying shares (including those held by related persons) in an aggregate amount of 25 per cent or more of the total voting rights of the target company. Failure to comply with this limitation entitles Thai NVDR Company to buy back any NVDRs representing the underlying shares in excess of that limit.

## Tax Considerations

Whilst Thai NVDR Company is exempted from paying corporate income tax on dividends and gains arising from Eligible Securities, an investment in NVDRs may be subject to Thai tax as follows:

### Income paid in lieu of dividends

Whilst NVDRs are treated as debt instruments under Thai laws, the Ministry of Finance has prescribed a Royal Decree which effectively reduces the rate of withholding tax for income paid in lieu of dividends payable to non-resident individuals or juristic persons not doing business in Thailand from 15 per cent to 10 per cent. Income paid in lieu of dividends to resident individuals remains subject to 10 per cent withholding tax as in the case of dividends from shares but NVDRs holders will be unable to claim any tax credit in respect of the income paid in lieu of such dividends.

### Gains

Individuals (either Thai or non-Thai) are exempt from paying tax on gains derived from disposition of NVDRs. However, gains arising from transfer of NVDRs by a non-resident juristic person not doing business in Thailand will be subject to withholding tax at the rate of 15 per cent, but an exemption may be available pursuant to the terms and conditions of a relevant double taxation treaty between Thailand and the country of the non-resident juristic person.

### Stamp Duty

No stamp duty is applicable for any sale and transfer of NVDRs.

NVDRs have been proven to be a very popular and successful instrument amongst foreign investors in shares issued by publicly listed companies on the SET.

This document is solely intended to provide an update on recent development in Thailand legislation and is not purported to provide a legal opinion, nor a legal advice to any person.

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