

Outline of New Financial Institutions Businesses Act, B.E. 2551 (2008)

Introduction

Following the financial crisis in 1997, the Financial Institutions Bill was drafted to strengthen the regulatory powers of the BoT, to expand its supervisory powers to include specialized financial institutions and to repeal existing laws. The bill was given priority importance in letters of the MoF/BoT to the IMF.

The bill was approved by the National Legislative Assembly on 19 November 2007 and published in the Government Gazette on 5 February 2008.

The new Act will come into force on 5 August 2008, 180 days from the date of its publication. It will repeal the Commercial Banking the Act and Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business and all amendments thereto.

The new Act defines “financial institution business” to mean commercial banking business, finance business and credit foncier business, and the business of specialized financial institutions.

The MoF is responsible for the enforcement of this new Act.

Chapter 1: Formation and Application for License

The commercial banking business, finance business, or credit foncier business can be undertaken only by a public limited company with a license from the Minister with the advice of the BoT.

A foreign commercial bank may establish a branch to undertake the commercial banking business in Thailand upon obtaining license from the Minister with the advice of the BoT.

Chapter 2: Structure of Financial Institution

Division 1: Shares and Shareholders

Ordinary shares and preferred shares of a financial institution must be named shares with a par value of not more than Baht 100 each. Articles of Association of the financial institution may contain no share transfer restrictions, except any necessary for compliance with the Act.

Not less than 75% of the issued shares of a financial institution must be held by persons of Thai nationality. Not less than three-fourths of the total number of directors must be persons of Thai nationality. The BoT may grant relaxation to these ceilings on foreign shareholding and number of directors to have foreign shareholding up to 49% and number of foreign directors up to 1/2 of all directors.

Any person who holds shares in a financial institution in the amount of five percent or more of the total issued shares, either directly or indirectly, shall report such holding to BoT. Shares held by “related person” shall be included in the amount of shares held by such person, but preferred shares which do not carry voting rights shall be excluded.

Except with authorization by BoT, no person can hold, either directly or indirectly or by “related person”, more than ten percent of the total issued shares of a financial institution.

Division 2: Directors, Managers or Persons with Power of Management

Appointment, or reappointment, of a director, a manager, a person with power of management, or an advisor of a financial institution requires prior approval of BoT.

Directors must apply the diligence of a careful businessman and be jointly responsible for the management of the financial institution. Directors are jointly responsible for any damage, to shareholders, depositors or P/N holders of the financial institution, due to failure to perform their duties in compliance with the order of BoT or financial institution examiner except if it can be proven that they had no dishonest intent or had no part in such failure.

Chapter 3: Supervision of Financial Institutions

This chapter includes the following divisions:

- Division 1: Maintenance of Capital Funds and Assets**
- Division 2: Investments by Financial Institutions**
- Division 3: Business Operations**
- Division 4: Restrictions on Granting of Credits**
- Division 5: Financial Business Group**
- Division 6: Classification and Management of Assets and Maintenance of Reserves**
- Division 7: Management of Assets and Maintenance of Liquid Assets**
- Division 8: Preparation of Accounts, Reporting and Auditors**
- Division 9: Merger, Transfer and Dissolution of Business**
- Division 10: General Supervision**

Subsequent chapters deal with the following subjects:

Chapter 4: Examination of Financial Institutions

BoT has the power to prescribe by notification that financial institutions shall set up various committees, and to prescribe the composition, qualifications and powers and duties of said committees.

Chapter 5: Rectification of Condition and Operation of Financial Institutions

Chapter 6: Taking Over the Control

Chapter 7: Supervision of Specialized Financial Institutions

Transitional Provisions

Licensed commercial banks, finance companies and credit foncier companies are deemed financial institutions which have licenses under the new Act.

All ministerial regulations and notifications of the MOF, and notifications of the BoT remain in force.

All relaxations granted relating investment, purchasing or holdings of shares in excess of ratios prescribed by BoT will continue for a period not exceeding 5 years.

The durations of other relaxations granted under various Sections of the Act are prescribed.

A company which does not undertake financial business but has been granted relaxation to hold shares in any financial institution in excess of prescribed ratio may continue to hold the shares of such financial institution and may purchase shares issued for capital increase so as to maintain the proportion of its shareholding before the date this Act comes into force. However, if certain of those shares have been disposed of, the company shall have the right to hold shares in excess of the prescribed rate equal to the amount of the remaining shares.