

**Financial Institutions Businesses Act,  
B.E. 2551 (2008)**

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**Translation**

Bhumibol Adulyadej, Rex.

Given on the 27th day of January 2008

Being the 63rd year of the Present Reign

By Royal command of His Majesty King Bhumibol Adulyadej, it is hereby proclaimed that:

Whereas it is expedient to enact a law on the commercial banking business, finance business and credit foncier business together;

This Act contains some provisions of law on restriction of individual rights and liberty and has been enacted by virtue of the provision of Section 29 together with Section 31, Section 33, Section 36, Section 39, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand.

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislation Assembly, as follows:

**Section 1**

This Act shall be called the "Financial Institutions Businesses Act, B.E. 2551 (2008)".

**Section 2**

This Act shall enter into force after one hundred and eighty days from the date of its publication in the Government Gazette.

**Section 3**

The following laws shall be repealed:

- (1) Commercial Banking Act, B.E. 2505
- (2) Commercial Banking Act (No. 2), B.E. 2522
- (3) The Emergency Decree amending the Commercial Banking Act B.E. 2505, B.E. 2528
- (4) Commercial Banking Act (No. 3), B.E. 2535
- (5) The Emergency Decree amending the Commercial Banking Act B.E. 2505 (No. 2), B.E. 2540
- (6) The Emergency Decree amending the Commercial Banking Act B.E. 2505 (No. 3), B.E. 2540
- (7) The Emergency Decree amending the Commercial Banking Act B.E. 2505 (No. 4), B.E. 2541
- (8) The Act on Finance Business, Securities Business and Credit Foncier Business, B.E. 2522
- (9) The Emergency Decree amending the Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522, B.E. 2526
- (10) The Emergency Decree amending the Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 2), B.E. 2528
- (11) The Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 2), B.E. 2535

- (12) The Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 3), B.E. 2540
- (13) The Emergency Decree amending the Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 3), B.E. 2540
- (14) The Emergency Decree amending the Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 4), B.E. 2540
- (15) The Emergency Decree amending the Act on Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 5), B.E. 2541

#### **Section 4**

In this Act,

“financial institutions businesses” means commercial banking business, finance business and credit foncier business and shall include the business of specialized financial institutions;

“commercial banking business” means business of accepting deposits of money or accepting money from the public subject to repayment on demand or at the end of a specified period and of employing such money in one or several ways such as granting of credits, buying and selling of bills of exchange or other negotiable instrument, buying and selling of foreign exchange;

“finance business” means business of accepting deposits of money or accepting money from the public subject to repayment on demand or at the end of a specified period, which is not accepting deposits or money in such account that may be withdrawn by cheque, and of employing such money in one or several ways such as granting of credits, buying and selling of bills of exchange or other negotiable instrument;

“credit foncier business” means business of accepting deposits of money or accepting money from the public subject to repayment at the end of a specified period and of employing such accepted money in one or several ways as follows:

- (1) granting credits by mortgaging immovable property;
- (2) accepting immovable property on consignment;

“finance related business” means commercial banking, finance business, credit foncier business, securities business, life insurance business or any other business prescribed in the notification of the Bank of Thailand;

“granting of credits” means lending money, purchasing, discounting, rediscounting, becoming a creditor upon having paid or ordered that an amount of money be paid on behalf of a customer, or become a creditor upon having paid in accordance with an obligation specified in a letter of credit or any other obligation;

“credit-like transaction” means factoring business, hire purchase business, leasing business and other transaction possessing characteristics similar to granting of credits prescribed in the notification of the Bank of Thailand;

“securities” means securities in accordance to the laws governing securities and exchange;

“financial institution” means:

- (1) a commercial bank,
- (2) a finance company, or
- (3) a credit foncier company;

“commercial bank” means a public company limited, licensed to undertake commercial banking business included a branch of a foreign commercial bank licensed to undertake commercial banking business;

“retail bank” means a public company limited, licensed to undertake commercial banking business with the main objective of providing services to retail customers as well as small and medium sized enterprises with restriction in undertaking business related foreign

exchange, derivatives and other high risk transactions prescribed in the notification of the Bank of Thailand;

“subsidiary of foreign commercial bank” means a public company limited licensed to undertake commercial banking business whereas the shares of the company are held, either directly or indirectly, by a foreign commercial bank in excess of ninety-five percent of total distributed shares of such company;

“branch of foreign bank” means a branch of a foreign commercial bank licensed to undertake commercial banking business in Thailand;

“finance company” means a public company limited, licensed to undertake finance business;

“credit foncier company” means a public company limited, licensed to undertake credit foncier business;

“capital fund” means money with the following characteristics:

- (1) paid-up capital included premiums of shares received by a commercial bank and money received by such commercial bank as a result of issuance of certificates representing the right to buy shares of such commercial bank;
- (2) statutory reserve;
- (3) reserves appropriated from net profits at the end of each accounting period in accordance with the resolution of the shareholders’ general meeting or the regulations of such commercial bank, excluding reserves for diminution of the values of assets and reserves for repayment of debts;
- (4) Net profit after appropriation;
- (5) Reserves arisen from assets revaluation, other reserves; or
- (6) Money which a commercial bank receives from issuing a debt instrument, an instrument or any other money as prescribed in the notification of the Bank of Thailand;

“company” means a company limited, a public company limited, a partnership limited, a registered ordinary partnership, or any other juristic person;

“parent company” means a company having power to control another company either directly or indirectly, with the following natures:

- (1) possessing shares in a company in excess of fifteen percent of total distributed shares;
- (2) possessing power to control the majority voting rights in shareholders’ meeting of a company;
- (3) possessing power to appoint or remove any person with management authority or half of the directors or more of a company; or
- (4) possessing power to control business in any manner as prescribed in the notification of the Bank of Thailand;

Where any company holds, either directly or indirectly, twenty percent or more of total distributed shares of another company, there shall be a presumption that the company having such shares has power to exercise control over the other company unless it could be proven otherwise;

“subsidiary company” means:

- (1) a company having another company as parent company; or
- (2) a subsidiary of the company under (1) in any step along the line;

“affiliated company” means a subsidiary company which shares the same parent company with another company;

“person with management authority” means:

- (1) a manager, deputy manager, assistant manager, director of a financial institution or company, whichever is the case, or any person with equivalent rank, whatever the position may be named;
- (2) a person whom a financial institution or company has contracted to have partial or full power of management; or
- (3) a person who has the de facto power to exercise control over or dominate the manager or director, or the management of a financial institution or a company to comply with his/her order in formulating policy or conducting business of the financial institution or company;

“executive director” means a director who performs management functions in a financial institution or company as prescribed in the notification of the Bank of Thailand;

“nominee” means a person having relationship with another person in one of following manners:

- (1) a spouse,
- (2) a child or adopted child who is a minor,
- (3) a company which the person or person under (1) or (2) has the power of management,
- (4) a company which the person or person under (1) or (2) has majority voting rights in shareholders’ meeting,
- (5) a company which the person or person under (1) or (2) has the power to control the appointment or removal of directors,
- (6) a subsidiary company of the company under (3), (4) or (5),
- (7) an affiliated company of the company under (3), (4) or (5),
- (8) an executor, nominee, or
- (9) any other person possessing characteristics prescribed in the notification of the Bank of Thailand;

Where any person holds, either directly or indirectly, twenty percent or more of total distributed shares of a company; it shall be presumed that the company is a nominee to the said person unless it could be proven otherwise;

“major shareholder” means any person holding or possessing shares of a financial institution in excess of five percent of the total distributed shares, included shares held by nominees;

“Minister” means the Minister having charge of the enforcement of this Act.

## **Section 5**

In any business undertaking in the manners of deposit taking, accepting deposits from the public, granting of credits or engaging in financial business, if it affects the overall economy of the country and there is no specific law supervising of such business, the Bank of Thailand may propose an enactment of a Royal Decree prescribing such business to be subject to the provisions of this Act, either fully or partially included related penalty clauses. In addition, supervisory regulation for such business may also be prescribed.

## **Section 6**

The raising of capital from the public through selling or issuing of securities approved under the law governing securities and exchange shall not be subject to the enforcement of this Act.

## **Section 7**

Notification of the Bank of Thailand issued under this Act may be enforceable upon published in the Government Gazette.

## **Section 8**

The Minister of Finance shall be in charge of the enforcement of this Act and shall have the power to issue notifications to implement this Act.

Notifications under paragraph one, upon published in the Government Gazette, shall be enforceable.

The Minister may instruct the Bank of Thailand to report information obtained from the operations as prescribed by the Minister. Such reporting may be instructed to be submitted periodically or on occasion and explanation or clarification may also be required.

## **Chapter 1**

### **Formation and License Application**

## **Section 9**

Undertaking of a commercial banking business, finance business or credit foncier business shall be established in the form of a limited public company with a license granted by the Minister at the advice of the Bank of Thailand. Such approval may be granted with conditions as the Minister may deem appropriate.

Application to incorporate a public company limited to undertake the businesses under paragraph one shall be subject to prior approval of the Minister.

Upon having registered as a public company limited, such public company limited shall then submit an application for a license to the Minister by way of the Bank of Thailand. The application shall be in accordance with the format prescribed in the notification by the Bank of Thailand.

Application and issuance of a license shall be in accordance with the rules, procedures and conditions included payment of fees as prescribed by the Minister at the advice of the Bank of Thailand.

## **Section 10**

A foreign commercial bank may establish a branch to undertake commercial banking business in accordance with the provisions under this Act upon granted a license by the Minister at the advice of the Bank of Thailand. Such approval may be granted with conditions as the Minister may deem appropriate.

In applying for a license under the first paragraph, the foreign commercial bank shall present a written consent from the legal supervisory and examination authority of such foreign commercial bank to the Minister by way of the Bank of Thailand.

Application and issuance of a license under the first paragraph including payment of fees shall be in accordance with the rules as prescribed by the Minister at the advice of the Bank of Thailand.

## **Section 11**

Financial institutions shall bear names which shall include the word "bank", "finance company" or "credit foncier company" as a prefix as specified in the license, as the case may be.

## **Section 12**

No person except for financial institutions shall use a name or exhibit in a name in financial business that contains the word "bank", "capital", "finance", "investment", "credit", "trust", "finance [in English language]", "credit foncier company" or any other word of similar meaning.

The provision under paragraph one shall be applicable to those granted permission by the Bank of Thailand or by other laws.

### **Section 13**

Opening, relocating of the head office or any branch, or closing of a branch of a financial institution must receive prior approval from the Bank of Thailand and shall be in accordance with the regulation prescribed in the notification of the Bank of Thailand.

### **Section 14**

Setting up of a financial institution's representative office abroad and setting up of representative office of a foreign financial institution in Thailand may be permitted upon receiving prior approval from the Bank of Thailand. The Bank of Thailand may prescribe additional regulation with the approval.

The representative office under paragraph one shall not accept, directly or indirectly, deposits or money from the public subject repayment on demand or at the end of a specified period.

## **Chapter 2**

### **Structure of Financial Institution**

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#### **Division 1**

#### **Shares and Shareholders**

### **Section 15**

Ordinary shares and preferred shares of financial institutions shall be of the type which specifies the bearer's name. Their par value shall not be more than one hundred Baht per share and the shares may not be subject to any regulation imposed by the financial institution in its constitution to restrict transfer of shares, except for the purpose of compliance with this Act.

Financial institutions may issue preferred shares without voting right or other preferred shares upon receiving prior approval from the Bank of Thailand. In granting the approval, the Bank of Thailand may prescribe regulation with which the financial institution shall comply.

### **Section 16**

Financial institutions' shares shall be held by persons of Thai nationality of no less than seventy-five percent of distributed shares with voting rights and no less than three-fourths of all directors must be of Thai nationality.

Where it is deemed appropriate, the Bank of Thailand may grant permission to persons of non-Thai nationality to hold shares up to forty-nine percent of the distributed shares with voting rights and may permit over one-fourths of the directors to be of non-Thai nationality but the proportion shall not be more than one half of the total number of directors.

In the case where it is necessary to rectify the operations or to strengthen the stability of any financial institution or the stability of the financial institutions system, the Minister upon recommendation of the Bank of Thailand has the power to relax the requirement and set the number of shares or directors to be different than those prescribed in paragraph two. Such waiver may be granted with rules and timeline condition.

### **Section 17**

Any person holding or acquiring shares of any financial institution, either directly or indirectly, of five percent or more of total distributed shares, such person shall report his/her shareholding or acquisition to the Bank of Thailand in accordance with the regulation prescribed in the notification of the Bank of Thailand.

The shares in paragraph one shall include shares held or possessed by nominees of the person under paragraph one.

Shares under paragraph one shall exclude preferred shares without any voting rights.

In the case where the person under paragraph one fails to report in accordance with the regulation prescribed in the notification of the Bank of Thailand, provision under Section 19 shall be applied on such unreported share, *mutandis mutatis*.

### **Section 18**

No person shall hold or possess shares of any financial institution, either directly or indirectly, in excess of ten person of total distributed shares unless approved by the Bank of Thailand or in accordance with the regulation prescribed in the notification of the Bank of Thailand.

Shares in paragraph one shall include shares held or possessed by nominees of the person under paragraph one.

Shares under paragraph one shall exclude preferred shares without any voting rights.

### **Section 19**

Any person acquired shares of any financial institution causing the number of shares held to breach Section 18, such person must dispose the excess shares to other party within ninety days from the date of the receipt of such shares unless a waiver is approved by the Bank of Thailand. The waiver shall not be more than ninety days.

In the case where the person under paragraph one fails to dispose the excess shares within the period prescribe in paragraph one, the Bank of Thailand may petition to the court to order the disposal of the said excess shares. Moreover, where it deems that the holding of the shares breaches Section 18, the court shall be empowered to order the sale through auction or any other methods.

### **Section 20**

No financial institution shall dispose its shares to any person if such disposition shall cause such person's shareholding to breach Section 18.

The shares in paragraph one shall include shares held or possessed by nominees of the person under paragraph one.

Whenever issuing share subscription invitations, financial institutions shall specify the rules prescribed under Section 17, Section 18 and Section 19 in the prospectus.

### **Section 21**

Where any person hold shares of a financial institution in violation of Section 18, the holding of shares in excess of the prescribed percentage may not be set up against the concerned financial institution by such person and such financial institution may not pay dividend or any other remuneration to such person, or allow such person to vote at a meeting of shareholders on account of the portion of shares in excess.

Where the person under paragraph one receives shares in good faith from inheritance, if the financial institution announces a dividend payment within the ninety day period from the date of the receipt of the shares or within the period extended by the Bank of Thailand in accordance with paragraph one of Section 19, the person has the right to receive the dividend from the portion of shares which exceeds ten percent under Section 18. However, such person shall not be able to vote in the shareholders' meeting for the excess portion.

### **Section 22**

For the purpose of compliance with Section 16, Section 17, Section 18 and Section 19, financial institutions shall examine their respective shareholder registers prior to each shareholders' meeting, or prior to distribution of dividend or any other remuneration and

inform the Bank of Thailand of the results of such examination pursuant to the particulars in accordance with the regulation prescribed by the Bank of Thailand.

In the case where a shareholder is found breaching Section 18, the financial institution concerned shall so notify such person to dispose of the excess shares within the duration prescribed under Section 19, in addition to informing the Bank of Thailand.

### **Section 23**

Provisions of Section 15 to Section 22 shall not apply to any branch of foreign commercial bank established in Thailand or commercial bank which is a subsidiary of a foreign commercial bank.

## **Division 2**

### **Directors, Managers or Persons with Power of Management**

### **Section 24**

No financial institution shall appoint or allow any person with any of the following characteristics to be or perform the duty of a director, a manager, a person with management authority or an advisor of the financial institution.

- (1) Being a bankrupt or having been discharged from bankruptcy for not more than five years.
- (2) Having been imprisoned by a final court judgment for an offense related to property committed with dishonest intent regardless of whether the penalty is pending or not.
- (3) Having been dismissed or discharged from government service, state organization or agency on a charge of dishonest act in office.
- (4) Having been a person with management authority holding a position of a financial institution during the period which its license is withdrawn.
- (5) Having been removed from the position of director, manager or person with management authority of a financial institution under Section 89 (3), Section 90 (4) or under the law governing securities and exchange unless a waiver is granted by the Bank of Thailand.
- (6) Concurrently being a director, a manager an officer, or a person with management authority of any other financial institution unless a waiver is granted by the Bank of Thailand.
- (7) Being a manager or a person with management authority besides the position of director of a company being granted credits, guarantee, or aval by, or having contingent liabilities at the financial institution unless:
  - (a) Holding a position of director or advisor of the financial institution which is non-executive;
  - (b) Exempted in accordance with the regulation prescribed by the Bank of Thailand.
- (8) Being a government official, a member of the parliament, a senator, a member of district legislature, a district administrator or person holding any political position as prescribed by the Bank of Thailand.
- (9) Being an official or former official of the Bank of Thailand in accordance with the regulation prescribed in the notification of the Bank of Thailand, except in the case where appointed by the Bank of Thailand for the purpose of rectifying the financial standing or operation of the financial institution, or holding a position



with a financial institution which is a state enterprise in accordance with the law on budget procedures.

Moreover, officials of the Bank of Thailand or former officials of the Bank of Thailand, who are still prohibited from accepting a position under the regulation prescribed by the Bank of Thailand, shall not be entitled to receive any rights to purchase shares in such financial institution.

- (10) Being a person having any prohibited characteristic or lacking any qualification as prescribed by the Bank of Thailand.

### **Section 25**

The appointment of any director, manager, person with management authority or advisor of a financial institution shall require prior approval from the Bank of Thailand regardless of whether it is new appointment or re-appointment for the person to retain the position.

In considering the approval under paragraph one, the Bank of Thailand shall complete its consideration within fifteen days from the date that the Bank of Thailand receives the application and all relevant documents required by the Bank of Thailand. If the Bank of Thailand fails to notify the result of its decision within the said duration, it shall be deemed that the Bank of Thailand has granted an approval for such appointment.

If subsequently it becomes apparent that the approved person under paragraph one possesses any prohibited characteristics under Section 24, the Bank of Thailand shall revoke such approval.

### **Section 26**

During the annual general shareholders' meeting, directors shall disclose to the shareholders of any benefit, remuneration of directors, manager and persons with power of management received from the financial institution and shall notify the shareholders' meeting of the directorship in other businesses in accordance with the regulation prescribed in the notification of the Bank of Thailand.

To facilitate the compliance of paragraph one, directors shall have the duty to notify the financial institution of their directorship in other businesses.

### **Section 27**

In undertaking the business of a financial institution, directors shall perform their duties with prudence in a similar manner to that of a person in trade and shall be jointly responsible in their management of the financial institution, including:

- (1) Compliance of the financial institution with this Act;
- (2) Preparation and maintaining accurate books of accounts and other records of business in order to state the truthful financial standing and operating results of the financial institution, that they shall be disclosed to the shareholders, depositors and the public, and is subject to the examination in accordance with the regulation prescribed in the notification of the Bank of Thailand.
- (3) Arrangement for the financial institution to convene a shareholders' meeting within four months from the end of the six month accounting period when facing losses which renders the shareholders' equity at the end of the six month accounting period under Section 67 to be lower than fifty percent of paid-up capital. Additionally, another shareholders' meeting shall be convened when the shareholders' equity falls below twenty-five percent of the paid-up capital for the purpose of informing the shareholders of the true financial condition and operating results of the financial institution.

### **Section 28**

Directors shall be jointly accountable to the shareholders, depositors or holders of promissory notes issued by the financial institution for the purpose of raising fund from the public for any damage caused by failure to perform their duties imposed by the Bank of

Thailand or the financial institution inspector in accordance with this Act, unless it could be proven that they did not commit dishonesty or were involved in such failure toward their duties.

### **Chapter 3**

#### **Supervision of Financial Institutions**

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#### **Division 1**

#### **Maintenance of Capital Fund and Assets**

##### **Section 29**

Financial institutions shall maintain capital funds in accordance with the regulation prescribed in the notification of the Bank of Thailand.

The Bank of Thailand is empowered to prescribe classes and types of capital fund as well as rules for the calculation of capital fund of financial institution.

##### **Section 30**

Financial institutions shall maintain capital funds in proportion to their respective assets, liabilities, contingent liabilities or variables and any other risk in accordance with the regulation prescribed in the notification of the Bank of Thailand.

With regards to the notification under the first paragraph, the Bank of Thailand may issue general prescription for financial institutions to maintain capital funds in proportion to assets, liabilities, contingent liabilities or variables and any other risk in accordance with the size or type of assets, liabilities, contingent liabilities or variables and any other risk in aggregate of all types or for each type. Alternatively, if it becomes apparent that any financial institution has high risk exposure, the Bank of Thailand shall order such financial institution to undertake any relevant action as deemed appropriate.

##### **Section 31**

Financial institutions shall disclose the information related to capital maintenance and information pertaining to risk exposure of the financial institutions or their respective financial group in accordance with the regulation prescribed in the notification of the Bank of Thailand.

##### **Section 32**

Branches of foreign commercial banks licensed to operate business as prescribed in this Act shall maintain assets in Thailand or hold securities in other countries in accordance with the regulation prescribed in the notification of the Bank of Thailand. The said assets and securities shall be considered as capital funds under this Act.

Assets or securities under the first paragraph shall consist of:

- (1) money brought in from the head office or any other branch of the foreign financial institution situated outside of Thailand;
- (2) various reserves excluded reserves for diminution of the values of assets and reserves for repayment of debts; or
- (3) net profits of the branch in respect of each accounting period after deduction of loss incurred during every accounting year and included profits transferred to the head office's portion in the accounting but not yet remitted outside the Kingdom.

**Division 2**  
**Investment of Financial Institution**

**Section 33**

Subject to Section 34 and Section 35, financial institutions shall invest in securities for its own ownership in accordance with the regulation prescribed in the notification of the Bank of Thailand.

**Section 34**

No financial institution shall invest, purchase or hold directly or indirectly shares of a company in excess of the following ratios and shall comply with the regulation prescribed in the notification of the Bank of Thailand.

- (1) Twenty percent of the total capital fund of such financial institution for holding or possessing of shares in all companies.
- (2) Five percent of the total capital fund of such financial institution for holding or possessing of shares in each company.
- (3) Ten percent of the total distributed shares of the company.

Where necessary, the Bank of Thailand is empowered to prescribe the maximum ratio of investment, purchase or holding to be lowered than stipulated percentages in the first paragraph. Such prescription shall be notified at least 15 days in advance of the effective date.

In the case where a financial institution finds it necessary to hold or possess shares of any company as a result from debt restructuring, or as security of a loan which shall be disposed within six months from the date of purchase or acquisition, the Bank of Thailand shall have the power to grant temporary permission to hold or possess shares exceeding the ratios stipulated in paragraph one. However, the Bank of Thailand may prescribe rules with the waiver.

Shares of any nominee of a financial institution shall be included as shares held by such financial institution under this Act.

Prescription under this Section shall not be enforced on cases under paragraph 3 of Section 58.

**Section 35**

No financial institution shall hold or possess the following securities.

- (1) Shares or securities in connection with shares of a financial institution undertaking the same type of business except those acquired as a result of a debt settlement which shall be disposed within six months from the acquisition date, or those acquired with the permission of the Bank of Thailand. Such permission may be granted with conditions.
- (2) Securities in connection with shares of such financial institution in accordance with the regulation prescribed in the notification of the Bank of Thailand.

**Division 3**  
**Business Undertaking**

**Section 36**

Commercial banks, finance companies and credit foncier companies shall undertake the businesses specified to commercial banking business, finance business and credit foncier

business respectively and any related business or business pertinent to the business of commercial bank, finance company or credit foncier under the prescription in the notification of the Bank of Thailand. Moreover, the Bank of Thailand may issue notifications prescribing related or necessary businesses segregated by the types of financial institutions and types of commercial banks, and may prescribe regulation for undertaking such related or necessary businesses.

### **Section 37**

Financial institutions shall be open for business at their respective offices, at the minimum, on the days and hours as prescribed in the notification of the Bank of Thailand unless permission to do otherwise has been granted by the Bank of Thailand. Such permission may be granted with any rules to be observed.

Each year financial institutions shall announce traditional holidays as prescribed in the notification of the Bank of Thailand.

Financial institutions shall post the announcement of the operating days and opening and closing hours in a public area in the offices of the financial institutions.

### **Section 38**

Financial institutions shall post notices or disclose information concerning interest rates, discount rates and various service charges whether called under different descriptions, as well as other information related to the financial institution in a public area in the offices of the financial institutions such that the public and customers requiring to contact or utilize services at such facility shall be aware of such information.

Such information shall be reported with a copy of the notices to the Bank of Thailand.

Financial institutions shall publish information under paragraph on in any media in accordance with the regulation prescribed in the notification of the Bank of Thailand.

### **Section 39**

For the protection of consumer, the Bank of Thailand is empowered to prescribe to one or several types of financial institutions to comply with the following matters.

- (1) Accepting of deposits, accepting of money from the public, borrowing money, making investments, granting credits, incurring contingent liabilities, and conducting other businesses that financial institutions may do so.
- (2) Executing legal transactions or contracts with the public, consumers or retail customers in the course of the undertaking of businesses of financial institutions, which involve capital or have monetary values as prescribed by the Bank of Thailand regardless of whether it is a stipulation in the content, method to calculate returns or contract template.
- (3) Executing guarantee contracts with individuals by specifying the principal limits in the contract or prohibiting contracts of which the guarantor provides unlimited guarantee.

In the case of loan guarantee with definite due date and the financial institution has agreed to extend the term to the primary debtor but is unable to reach an agreement within six months, the financial institution shall notify the guarantee accordingly.

- (4) Requirements where a legal transaction or contract grant the sole right to financial institutions to modify the contract.
- (5) Disclosure of information related to financial institutions.

### **Section 40**

Financial institutions shall notify and demonstrate methods as well as details of the calculation of annual rate of service charge to the public and customers applying for credits.

Annual rate of service charge under paragraph one consists of all expenses a financial institution annually charges the public and customer in granting credits inclusive of interests, discounts and service fees.

The Bank of Thailand shall have the power to prescribe methods to calculate annual rates of service charge to be complied with by financial institutions.

#### **Section 41**

In the undertaking of business in connection with accepting deposits of money, accepting money from the public, granting of credits, borrowing of money, investing, incurring of contingent liabilities or buying and selling of bills of exchange or any other negotiable instrument, financial institutions shall comply with the regulations as prescribed in the notifications of the Bank of Thailand.

The prescription under the first paragraph may be in accordance with types of deposits or borrowing, categories of person, types of deposit or borrowing instruments, or types of instruments.

Where it is necessary to act for the stability of financial institutions and for auditing purpose of the financial institution inspectors, the Bank of Thailand is empowered to require financial institutions to comply with the prescriptions of the following matters.

- (1) Legal transactions related to financial institutions businesses.
- (2) Audit and internal control of financial institutions.
- (3) Management and administration of financial institutions.

#### **Section 42**

For the purpose of rectification of any economic condition, the Bank of Thailand shall have the power to issue notifications on the matters.

- (1) Stipulation of the limits that a financial institution is able to grant credits, to undertake transactions similar to credits, to grant acceptance or to give aval to bills for any particular type of business.
- (2) Prohibiting financial institutions to grant or to increase the amount of credits or transactions similar to credits to any particular business such that it is higher than the prescribed rate. The stipulation may be made as a proportion to the total credits or similar transactions granted by the financial institution or as a proportion to each type of businesses at any particular time.

#### **Section 43**

Financial institutions shall obtain prior approval from the Bank of Thailand for the following activities.

- (1) Selling or transferring the business of the financial institution, either entirely or the essential portions to other party under the resolution of a shareholders' meeting with no less than three quarters of the total votes of the attending shareholders with voting rights.
- (2) Purchasing or accepting the transfer of any other company, either entirely or the essential portions under the resolution of a shareholders' meeting with no less than three quarters of the total votes of the attending shareholders with voting rights.
- (3) Executing a contract entrusting or assigning any other person who is not a director, a manager or an officer of the financial institution with the absolute or partial power of management of the financial institution, or to amalgamate the business with any other party with an objective toward sharing of profits and losses.

In granting approval under the first paragraph, the Bank of Thailand may issue regulations for the financial institution to comply with and shall notify the Minister promptly.

#### **Section 44**

Financial institutions except credit foncier companies may accept deposits of money subject to withdrawal at the end of a specified period by issuing a certificate of deposit.

The certificate of deposit shall contain the following particulars:

- (1) Designation that it is a certificate of deposit.
- (2) Name of the issuing financial institution.
- (3) Province in which the issuer is located.
- (4) Issuing date.
- (5) An unconditional agreement to pay a specific sum including any interest (if any).
- (6) Maturity date.
- (7) Place of payment.
- (8) Name of the depositor or indicating that it is a payable to bearer.
- (9) Signature of authorized signatory of the issuing financial institution.

#### **Section 45**

The provisions of the Civil and Commercial Code Section 764 to Section 766, Section 899 to Section 907, Section 911, Section 913 (1) and (2), Section 914 to Section 916, Section 917 paragraph one and three, Section 918 to Section 922, Section 925, Section 926, Section 938 to Section 942, Section 945, Section 946, Section 948, Section 949, Section 959, Section 967, Section 971, Section 973, Section 986, Section 994 to Section 1000, Section 1006 to Section 1008, Section 1010 and Section 1011 shall apply to certificates of deposit *mutatis mutandis*.

#### **Section 46**

Where it is necessary, the Bank of Thailand may issue notifications to be complied with by financial institutions on the following matters.

- (1) Chargeable interest or discount.
- (2) Payable interest or discount.
- (3) Chargeable service fee.
- (4) Demandable earnest money deposit.
- (5) Required security in form of property.
- (6) Benefit that may be demanded from transactions similar to credits.
- (7) Demandable penalty fees.

Any and all the monies, properties or other objects which values can be assessed in monetary terms and which any depositor or person receives from a financial institution, officer or employee of a financial institution, due to acceptance of deposits, borrowing or receiving money, or which a financial institution, an officer or an employee of a financial institution receives in the course of conducting business of the financial institution, shall be deemed as interest, discount or service fee, as the case may be.

Excluded is the service fee under (3) which shall not be deemed as interest or discount chargeable by a financial institution under (1).

The prescription under paragraph one may be stipulated according to the type of businesses, borrowing, acceptance of money from the public or any type of activities that financial institutions may charge or pay. Prescription may also be stipulated on the method of calculation and time period for payment or collection.

## **Section 47**

Financial institutions may utilize the services of outside parties in their operations in accordance with the regulation prescribed in the notification of the Bank of Thailand.

### **Division 4**

#### **Restriction on Credits Granting**

## **Section 48**

Under the stipulation of Section 59, financial institutions are prohibited, either directly or indirectly, to:

- (1) grant credits or guarantee any debt to any of their respective directors, managers, deputy manager or persons holding positions of equivalent responsibility under a different title, persons with power of management, or to any nominee of such a person, except granting credits by means of credit card according to the maximum limit prescribed by the Bank of Thailand or granting credits in the form of employee's benefits to such persons in accordance with the regulation prescribed in the notification of the Bank of Thailand;
- (2) accept bills, give aval to bills or intervene for honor of bills which any of its directors, managers, deputy managers, assistant managers or persons holding positions equivalent responsibilities under different titles, persons with power of management of the financial institution, or nominee of such a person is the drawer, maker or endorser;
- (3) pay money or give any other asset to any of its directors, managers, deputy managers, assistant managers or persons holding positions equivalent responsibilities under different titles, persons with power of management of the financial institution, or nominees of such a person as remuneration for or by reason of any transaction or business of the financial institution other than gratuities, salaries, bonuses and other allowances which may normally be paid to them;
- (4) sell or give any property to any of its directors, managers, deputy managers, assistant managers or persons holding positions equivalent responsibilities under different titles, persons with power of management of the financial institution, or nominees of such a person, or purchase from such persons any assets with aggregate value exceeded that prescribed by the Bank of Thailand unless approved by the Bank of Thailand;
- (5) grant any other benefits to any of its directors, managers, deputy managers, assistant managers or persons holding positions equivalent responsibilities under different titles, persons with power of management of the financial institution, or nominees of such a person under the regulation prescribed in the notification of the Bank of Thailand.

## **Section 49**

Under the stipulation of Section 56, no financial institution shall grant credits, invest, incur contingent liabilities or undertake credit-like transactions to any major shareholder, or to any party with related interest, either one or several transactions in combination, at the end of any one day for each shareholder, in excess of five percent of any of type of its capital fund, or in excess of twenty-five percent of the total liabilities of such major shareholder or party with related interest, whichever is lower. Moreover, the calculation of credits, investment, contingent liabilities or transactions similar to credits is inclusive of those granted to nominees of the major shareholder as well.

Where it is deemed appropriate, the Bank of Thailand has the power to prescribe the maximum rate that credits, investment, contingent liabilities or credit-like transactions may be extended to or incurred with any major shareholder or any party with related interest or that credits granted as employee's benefit to such person in accordance with the regulation prescribed in the notification by the Bank of Thailand.

The granting of credits, investment, incurring of contingent liabilities or undertaking of transactions similar to credits granting shall be in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

Party with related interest under paragraphs one and two means any company that the financial institution, its directors, persons with power of management, or any nominee of such persons holds shares in aggregate to exceed ten percent of the total distributed shares of such a company.

### **Section 50**

No financial institution shall grant credits to invest in, incur contingent liabilities or undertake transactions similar to credits granting to any single person or several persons jointly in any single project, or to be utilized for the same purpose, at the end of any one day, to exceed twenty-five percent of any type of its capital fund and shall be in accordance with the regulations prescribed in the notifications by the Bank of Thailand.

As regards to the prescription under the first paragraph, the Bank of Thailand may be set as an absolute amount or lower ration than the prescribed ratio.

In the event that any financial institution amalgamates its operation, restructures the debts, sells or disposes assets to an asset management company or for any other appropriate reason, the Bank of Thailand may grant leniency to such financial institution to be exempted from compliance with paragraph one temporarily.

In the case where the person under paragraph one is a company, the amount of credits, investment, contingent liabilities or transactions similar to credits shall not exceed the ratio to capital funds of such company as prescribed by the Bank of Thailand unless approved by the Bank of Thailand.

Where credits, investments, contingent liabilities or transactions similar to credit granting are made to any juristic person, credits, investments, contingent liabilities or transactions similar to credit granting made to the parent company, subsidiaries and affiliated companies shall also be accounted as those extended to such juristic person.

Where credits, investments, contingent liabilities or transactions similar to credit granting are made to any juristic person, the credits, investments, contingent liabilities or transactions similar to credit granting made to the nominee shall be accounted as those extended to such a person as well.

Granting credits through purchasing, discounting or rediscounting bills under the first paragraph shall be deemed as granting of credits to the holder who sold the bills and to the person at any step along the line, who is liable to the bills except for those bills in accordance with regulations prescribed in the notifications by the Bank of Thailand.

In the event that any financial institution hedges against risk related to any granted credit, investment, contingent liability, or credit-like transaction from a financial institution or company in accordance with the regulations prescribed by the Bank of Thailand, it shall be deemed that the financial institution has granted credit, made investment, incurred contingent liability or undertaking credit-like transaction to such a financial institution or company provided the risk hedging as mentioned under paragraph one.

### **Section 51**

No financial institution shall grant credits, make investment, incur contingent liability or undertaking credit-like transaction to each type of industry exceeding of the ratio to its capital fund or assets prescribed in the notifications of the Bank of Thailand.



## **Section 52**

The provisions under Section 50 and Section 51 shall not apply to a financial institution in the following cases.

- (1) Granting of credit or undertaking of contingent liability that is guaranteed by the Ministry of Finance, for both the principal and interest, but shall not exceed the amount guaranteed.
- (2) Granting of credit to or undertaking of contingent liability for the Financial Institutions Development Fund or the Bank of Thailand.
- (3) Investing by purchasing securities of the Thai Government, securities of the Bank of Thailand or securities of the Financial Institutions Development Fund issued by state enterprises incorporated under specific law, or securities that the principal and interest are guaranteed by the Ministry of Finance, the Bank of Thailand, the Financial Institutions Development Fund or the Deposit Protection Agency, but shall not exceed the par value.
- (4) Granting of credit by accepting as collateral deposit accounts in such financial institution, Thai Government securities, securities of the Bank of Thailand, securities of the Financial Institutions Development Fund or securities of the Deposit Protection Agency, securities issued by state enterprises incorporated under specific law or securities which principal and interest are guaranteed by the Ministry of Finance, the Bank of Thailand, the Financial Institutions Development Fund or the Deposit Protection Agency, but shall not exceed the amount of money deposited as collateral or the par value of the securities.
- (5) Underwriting of securities in accordance with the regulation prescribed in the notification of the Bank of Thailand.
- (6) Interbank lending and borrowing in accordance with the regulation prescribed in the notification of the Bank of Thailand.
- (7) Granting of credit, making investment, incurring contingent liabilities or undertaking of credit-like transaction which risk is minimal or is equivalent to government securities which shall be in accordance with the regulation prescribed in the notification of the Bank of Thailand.
- (8) Issuance of commercial letters of credit.

## **Division 5**

### **Financial Business Group**

## **Section 53**

Financial business group is composed of financial institutions and other companies which conduct financial business or any supporting business with the following characteristics.

- (1) Financial business group which is composed of a financial institution as the parent company and one or more companies as subsidiaries, or
- (2) Financial business group which is composed of a non-financial institution parent company but consisted of one financial institution as a subsidiary where there may be one subsidiary or several companies making them affiliated companies.

## **Section 54**

Establishment of any financial business group is prohibited unless approved by the Bank of Thailand in accordance with the regulation prescribed in the notification of the Bank of Thailand.

## **Section 55**

The provisions under Section 16 to Section 22 shall apply to the shares held or possessed in the parent company of a financial institution *mutatis mutandis*.

Provisions under Section 25 shall be applied to the appointment of directors, managers, persons with power of management or advisors of the parent company of a financial institution and subsidiaries conducting financial businesses of the financial institution *mutatis mutandis*.

Provisions under paragraph one and paragraph two shall not be applicable to the parent company or subsidiaries of any financial institution subject to a specific law which regulates the businesses of the parent company or subsidiaries of the financial institution and already prescribed specific regulations for such matters.

## **Section 56**

Companies within the financial business group may conduct only financial business or supporting businesses as prescribed by the Bank of Thailand. They shall not conduct any other business.

In conducting financial business or supporting businesses under paragraph one, the Bank of Thailand may issue regulations for conducting such businesses unless the law that is enacted to regulate such business have already prescribed specific regulations.

## **Section 57**

To facilitate the examination to ensure stability of the financial business groups, the Bank of Thailand shall be empowered to supervise and examine the financial institutions, the parent company, subsidiaries and affiliated companies of the financial institutions as if they were the same entity, which shall be conducted in accordance with the regulations prescribed in the notifications of the Bank of Thailand unless the law that is enacted to regulate such business have already prescribed specific regulations.

In acting in accordance with the first paragraph, the Bank of Thailand shall have the power to set the ratio of capital fund or capital of the financial business group in proportion to assets, liabilities, contingent liabilities or variables and any other risk, or to set other ratios for the financial business groups of the financial institutions including the power to stipulate the financial business group to be able to disclose information between each other in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

## **Section 58**

Financial institutions shall not establish or retain any subsidiary unless approved by the Bank of Thailand.

In granting approval under the first paragraph, the Bank of Thailand may prescribe any other conditions for the compliance of the financial institution and its subsidiaries.

Financial institutions shall not hold shares in subsidiaries with an aggregate value exceeding the ratio of the total capital fund or any type of capital fund, in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

## **Section 59**

Financial institutions may grant credits or engage in transactions with their respective parent company, subsidiaries or affiliated companies, but shall not grant credits or engage in transactions in excess of the prescription of the Bank of Thailand unless approved.

Transactions under the first paragraph shall include:

- (1) purchase or sale of assets including assets with a pledge of repurchase from the parent company, subsidiaries or affiliated companies;
- (2) receipt of securities issued by the parent company, subsidiaries or affiliated companies as collateral in credit granting, issuance of guarantee or issuance of letter of credit for the parent company, subsidiaries or affiliated companies;

- (3) any transaction beneficial to the parent company, subsidiaries or affiliated companies.

Any credit granting or transaction with any nominee of the parent company, subsidiaries or affiliated companies shall be considered credit granting or transaction with such companies.

## **Division 6**

### **Asset Classification and Provisioning**

#### **Section 60**

Financial institutions shall classify assets and contingent liabilities which are impaired or may be impaired, and shall write them off from the account or set provisions for such assets and contingent liabilities in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

Where it is apparent that upon deducting the classified assets or contingent liabilities, which have not been written off or which provisions have not been set, from the capital fund, the remaining capital is less than the amount required to maintain in accordance with Section 30, the Bank of Thailand shall have the power to set any relevant measure to be taken by such financial institution until the regulation under the first paragraph has been complied with.

If the stipulations under paragraph one results in requiring the financial institution to increase asset write off from the account or to increase provision, an announcement shall made no less than thirty days prior to the enforcement date.

#### **Section 61**

Financial institutions shall set provision for unimpaired assets and contingent liabilities in accordance with the regulations prescribed in the notifications of the Bank of Thailand, but shall not exceed five percent of the unimpaired assets and contingent liabilities.

#### **Section 62**

Financial institutions shall cease recognizing and reverse accrued interest received as income from classified assets in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

## **Division 7**

### **Asset Management and Maintenance of Liquid Assets**

#### **Section 63**

Financial institutions shall manage the assets, liabilities and contingent liabilities such that they correlate to the deposits, borrowings or acceptance of money from the public in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

#### **Section 64**

Financial institutions shall maintain liquid assets in proportion to the total or each type of deposits or loans at the ratio prescribed by the Bank of Thailand.

The Bank of Thailand may mandate financial institutions to maintain liquid assets of certain types or of all types, or set a ratio or each type on a general basis, or on a specific basis where appropriate.

If the stipulations in paragraph one or paragraph two should cause financial institutions to increase the liquid asset ratio, an announcement shall be issued no less than fifteen days prior to the enforcement date.

### **Section 65**

Liquid assets consist of:

- (1) cash;
- (2) deposits at the Bank of Thailand;
- (3) net deposits at other financial institutions;
- (4) unencumbered deposits;
- (5) unencumbered Thai Government securities, Bank of Thailand securities or securities of the Financial Institutions Development Fund;
- (6) unencumbered debentures or bonds that the Ministry of Finance, Bank of Thailand or the Financial Institutions Development Fund guaranteed either only the principal or both principal and interest;
- (7) other assets which the Ministry of Finance, Bank of Thailand or the Financial Institutions Development Fund ultimately undertake to compensate losses in accordance with the regulations prescribed in the notifications by the Bank of Thailand;
- (8) other assets which are liquid and creditworthy in accordance with the regulations prescribed in the notifications by the Bank of Thailand.

Liquid assets as in (4), (5), (6) and (8) must be transferrable.

## **Division 8**

### **Accounting, Reporting and Auditors**

#### **Section 66**

Financial institutions shall prepare its accounts to state the actual operating performance and financial condition which must comply with the accounting policy issued by the Institute of Accounting Professional, endorsed by relevant government authority and consistent with the regulations prescribed in the notifications of the Bank of Thailand.

#### **Section 67**

Financial institutions shall prepared financial statements for every six month period and twelve month period which is the accounting year of the financial institutions in accordance with the forms prescribed in the notification of the Bank of Thailand. In addition, the financial statements shall be audited and given opinion by an auditor approved by the Bank of Thailand as a qualified auditor of such accounting year.

Financial institutions shall announce the financial statements prepared in accordance with the first paragraph which have been audited by an auditor and approved by directors of the financial institutions by posting the financial statements in a public place at the head office and branches of such financial institutions and publishing them in any news medium in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

Preparation of financial statements for the first six month of the accounting year under paragraph one, audit and opinion under paragraph one and announcement and submission to the Bank of Thailand under paragraph two shall be completed within three months from the end of the accounting period.

Preparation of annual financial statements for the accounting year under paragraph one, audit and opinion under paragraph one shall be completed prior to submission to the

shareholders' general meeting. Moreover, the announcement and submission to the Bank of Thailand under paragraph two shall be completed within twenty-one days from the date that the general shareholders' meeting approves the financial statements. However, the whole process must not exceed four months from the end of the accounting year.

Stipulations under this Section shall not apply to branches of foreign commercial banks.

### **Section 68**

Branches of foreign commercial banks shall publish the financial statement of such foreign commercial banks within one month from the date that the foreign commercial banks announce their financial statements by posting in an open area at the branch office the foreign commercial bank.

Branches of foreign commercial banks shall prepare financial statements every twelve month period which is the accounting year of such branches of the foreign commercial banks in accordance with the forms prescribed in the notification of the Bank of Thailand.

Branches of foreign commercial banks shall announce the financial statements under paragraph two which have been audited and which opinion have been issued by an auditor by posting them in a public area of the branch office of such foreign commercial banks including publishing them in any news medium in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

### **Section 69**

Auditors approved by the Bank of Thailand under Section 67 shall adhere to the code of conducts and ethics in performing audits in order to express opinions on the financial statements in accordance with the accounting standards stipulated under the law regarding accounting as well as any additional stipulations prescribed by the Bank of Thailand, and shall issue opinions on the financial statements within a suitable period to allow the financial institutions to comply with the stipulated timeline under Section 67.

In the case where a financial institution has made any incorrect supporting accounting document or incorrect recording, the auditor shall make factual disclosure that is material to the accounts and affects the financial statements on the audit report which he/she affixes signature to certify as well as report the matter to the Bank of Thailand.

The Bank of Thailand may withdraw its approval of any auditor, in accordance with Section 67, who fails to comply with the provision under the first or second paragraph.

### **Section 70**

Where the auditor has reasonable cause to suspect a fraud in any financial institution, the auditor shall notify the Bank of Thailand and submit relevant documents and evidences to the Bank of Thailand promptly.

### **Section 71**

The Bank of Thailand may require a financial institution, parent company, subsidiaries or affiliated companies within the financial business group of the financial institution to submit any report or information by any communication medium, or disclose any document within a specified period or on occasions as prescribed by the Bank of Thailand, as well as to provide explanation or clarification of such report, information or document in accordance with the regulations prescribed in the notifications of the Bank of Thailand.

The Bank of Thailand may order the financial institution to have its directors, managers, officers, employees, persons with management authority or auditors to testify or produce information, accounts, documents and other evidence related to the affairs of the financial institution within a stipulated period.

The financial statements, reports, information, documents, explanations submitted or disclosed under the first or second paragraph shall be complete and truthful. In the case where the Bank of Thailand deems that the financial statements, reports, information, documents, explanations submitted or disclosed by a financial institution under the first

paragraph are incomplete or contain vague information, or in the case where the Bank of Thailand deems necessary or appropriate, the Bank of Thailand shall have the power to appoint auditors or specialists to conduct an audit and report the outcome to the Bank of Thailand. Any expense incurred shall be borne by the financial institution.

## **Division 9**

### **Amalgamation, Transfer and Closure of Business**

#### **Section 72**

An amalgamation of any financial institution with another financial institution shall result in the cancellation of the license of such financial institution.

#### **Section 73**

Where any financial institution wishes to amalgamate its business with another financial institution, transfer or acquire the entire business or an essential part of the business to or from another financial institution, or where any financial institution or major shareholder of any financial institution wishes to purchase or obtain shares in another financial institution regardless of whether it is the same type of financial institution or different type in order to amalgamate, transfer or acquire business which shall cause the financial institution to have a more stable position or operation, the financial institution or the major shareholder of a financial institution, as the case may be, shall submit a proposal disclosing operating details to the Bank of Thailand. Upon approval, the Bank of Thailand shall issue a notification of the approval. The Bank of Thailand may stipulate a timeline and any conditions in the notification.

In the undertaking of the approved proposal under the first paragraph, if the involved financial institutions find it necessary to take any actions related to the following provisions, the enforcement of these provisions shall be exempted, as the case may be.

- (1) Sections 237, 1117, 1119, 1145, 1185, 1220, 1222, 1224, 1225, 1226, 1238 and Section 1240 of the Civil and Commercial Code.
- (2) Section 31, Section 33 paragraph two, Section 52, Section 54 paragraph two, Sections 102, 107, 136 (2), 137, 139, 140, 141, 146, 147, and 148 of the Public Company Limited Act, B.E. 2535 (1992).
- (3) Sections 114 and 115 of the Bankruptcy Act, B.E. 2483 (1940), only the part that is relevant to the transfer of assets or any activity related to assets in the course of merger or acquisition.

In the case that there is any damage to any party due to the undertaking under paragraph two, the financial institutions that amalgamated or acquire the entire or partial business shall be jointly liable for those damages.

#### **Section 74**

Upon issuance of the approval of the Bank of Thailand in accordance with Section 73, financial institutions which are amalgamating, transferring or acquiring the transfer of all or parts of the business shall convene a shareholders' meeting to consider the amalgamation, transfer or acquisition. In respect thereto, provisions in the regulations governing shareholders' meeting for the amalgamation, transfer or acquisition of business in accordance with the Civil and Commercial Code or the law governing public company limited, as the case may be, shall be enforced.

For the shareholders' meeting under paragraph one, such financial institutions shall cease making any registration on shares transfer after seven days from the date that the approval of the Bank of Thailand is announced as prescribed in Section 73, until the day of the shareholders' meeting. The notice of the shareholders' meeting shall be sent not less than seven days in advance but not to exceed fourteen days. In addition, the notice of the

shareholders' meeting shall be advertised in accordance with the regulation prescribed in the notification of the Bank of Thailand.

In the meeting, the amalgamation, transfer or acquisition of the business shall be deemed legally approved upon receiving approval from no less than three quarters of the votes of the shareholders present.

Where a government agency or a state enterprise holds a stake of ninety percent or more in any financial institution, once the approval made by the Bank of Thailand announced in accordance with Section 73, the approval of the Bank of Thailand shall be deemed as resolution of the shareholders' meeting and the amalgamation, transfer or acquisition of the business shall be deemed legally approved without having to convene a shareholders' meeting in accordance with paragraph one.

It is prohibited for any person to file a bankruptcy suit against the financial institutions under Section 73 in the duration that the amalgamation, transfer or acquisition is being processed as approved by the Bank of Thailand under Section 73.

#### **Section 75**

Regarding financial institutions undertaking proceedings in accordance with Section 73 paragraph one, if there is a transfer of guaranteed assets other than rights of mortgage, rights of pledge or rights arisen from guarantee which shall belong to the transferee in accordance with Section 305 of the Civil and Commercial Code, any other guarantees shall belong to the merged or acquiring financial institution, as the case may be.

#### **Section 76**

Regarding financial institutions undertaking proceedings in accordance with Section 73 paragraph one, if there is legal enforcement of right case in the midst of court proceeding, the merged or acquiring financial institution, as the case may be, shall subrogate the counterparty's right in such a case and may introduce new evidence to counter previously submitted documents, cross-examine witnesses already cross-examined, raise objection on evidences taken. In addition, in the case where a verdict has been rendered, such financial institution shall subrogate the rights of the creditor or debtor in such verdict.

#### **Section 77**

The process of transferring all or parts of the business approved by the Bank of Thailand shall proceed under the provisions under this Chapter. In this regard, transfer of claims pertaining to such transferring of business shall be done without prior notice to debtors as required by Section 306 of the Civil and Commercial Code.

However, such exception shall not affect the rights of debtors to defend in accordance with Section 308 paragraph two of the Civil and Commercial Code.

#### **Section 78**

Any financial institution wishing to terminate or temporarily suspend its operation shall be required to obtain prior approval from the Bank of Thailand and shall comply with regulations prescribed in the notifications of the Bank of Thailand.

#### **Section 79**

The Bank of Thailand, upon granting approval in accordance with the provisions of this Chapter shall promptly report to the Minister of Finance.

### **Division 10 General Supervision**

#### **Section 80**

No financial institution shall undertake any of the following activities:

- (1) Reduce its capital without an authorization from the Bank of Thailand. In this regards, the authorization of the Bank of Thailand may be granted with regulation pertained to the capital reduction. Section 117, Section 1225 and Section 1226 of the Civil and Commercial Code and Section 139 paragraph one and Section 141 of the Public Company Limited Act, B.E. 2535 (1992), as the case may be, shall not apply.
- (2) Purchase or hold immovable properties except:
  - (a) those used as premises for the business of the financial institution or as places of residence or welfare facility for its officers and employees as suitable, given permission of the Bank of Thailand which may be granted subject to regulations;
  - (b) those acquired from debt settlement, as security in respect of credit granting or the purchase of an immovable property mortgaged to the financial institution at an auction conducted pursuant to an order of a court or an official receiver, but such immovable property shall be disposed of within five years from the date of passing of ownership of the immovable property to the financial institution; whereas upon necessity, the Bank of Thailand may extend the period for disposing the property and may prescribe regulation with the extension;
  - (c) those purchased or held by a finance company undertaking housing finance or credit foncier company for business purpose in accordance with the regulation prescribed in the notification of the Bank of Thailand.
- (3) Accept its own shares as collateral or accept shares of a financial institution of the same category from another similar financial institution as collateral.

#### **Section 81**

Financial institutions shall notify the Bank of Thailand in writing within fifteen days from the date of the occurrence of the following events:

- (1) Upon amending their memorandum of association or articles of association.
- (2) Upon changing of any of their directors, manager or officer or persons with management authority.

#### **Section 82**

To facilitate the Bank of Thailand's examination of financial institutions, financial institutions shall retain information, accounts, documents, corporate seal or other evidences related to their business, assets and liabilities in accordance with the regulation prescribed in the notification of the Bank of Thailand.

#### **Section 83**

Any financial institution fails to undertake business of which they are licensed to undertake, in the volume that they should normally do in accordance with regulation prescribed in the notification of the Bank of Thailand, the Bank of Thailand may instruct such financial institution to comply with the said notification. In this regard, regulation and timeline may also be stipulated. If any financial institution fails to comply with the instruction of the Bank of Thailand, the Bank of Thailand may order such financial institution to close its operation.

The Bank of Thailand, upon ordering the closure in accordance with paragraph one, shall propose to the Minister of Finance to withdraw the license and liquidate the financial institution.

### **Chapter 4**

#### **Examination of Financial Institution**



## **Section 84**

For the benefit of financial institution's good governance, the Bank of Thailand is empowered to prescribe financial institutions to establish various committees as well as stipulating the authority, components, qualification, and responsibilities of the committees.

Section 85 The Bank of Thailand is empowered to appoint staff of the Bank of Thailand or external parties as financial institution inspectors to audit activities, assets and liabilities of financial institutions, parent company, subsidiaries or affiliated companies, and companies within the financial related group as well as the debtors and nominees of such financial institutions, on a general or specific basis.

The financial institution inspectors shall have the following authorities.

- (1) To order any director, officers, employees auditor of a financial institution and any person who is responsible for collecting or analyzing data of the financial institution either by using computer or any other instrument, to testify on the business, assets and liabilities of such financial institution, to submit copies of or to present information, accounts, document, corporate seal or other evidence.
- (2) To enter into business premises of a financial institution or business premises of an outsource provider of a financial institution in order to examine the operations of the financial institution in compliance with this Act.
- (3) To enter, during the time of sunrise and sunset or during its operating hours, into any premises in order to inspect wherein an offence under any provision of this Act is reasonable suspected to have been committed or there appears to be any evidence or documents related to the offence. Whereas, upon having entered and commenced such audit, if it is not yet completed, the audit shall continue into the night or beyond the operating hours of such a premises upon approval of the Bank of Thailand.
- (4) To seize or attach assets, documents or objects related to any offense under this Act to facilitate the investigation or prosecution. In issuing the seizure or attachment, rationale, necessity and rights of the party whose properties are being seized or attached shall be disclosed.
- (5) To audit the condition or operation at the business premises of the parent company, subsidiaries, affiliated company and companies in the financial related group of such financial institution, including instructing nominees to testify, submit copies or present information, accounts, documents, corporate seals or other evidence pertained to the business, assets and liabilities.
- (6) To audit condition or operation at the business premises of the debtors or nominees of a financial institution including instructing nominees to testify, submit copies or present information, accounts, documents, corporate seals or other evidence pertained to the business, assets and liabilities in the event that there is a reasonable suspicion that the financial institution has violated Section 48, Section 49, Section 50, Section 66 or there is a reasonable cause to believe that an offense is committed in the course of business of the financial institution.

With regards to performing his/her duties, a financial institution inspector is empowered to assign any person to assist him/her with the inspector's duties.

Financial institution inspectors shall report the outcome of the examination under paragraph one to the Bank of Thailand in accordance with the forms prescribed by the Bank of Thailand.

## **Section 86**

With regards to performing of duties of the financial institution inspectors and persons under Section 85 paragraph three, relevant persons shall provide due conveniences.

## **Section 87**

With regards to performing of duties under Section 85, financial institution inspectors shall present their identification cards issued by the Bank of Thailand to concerned persons.

The identification card of a financial institution inspector shall be in the format prescribed in the notification of the Bank of Thailand.

## **Section 88**

Financial institution inspectors shall be officials under the Penal Code.

## **Chapter 5**

### **Remediation of Condition or Operation of Financial Institution**

## **Section 89**

Where any financial institution, director, manager or person with management authority violates or fails to act in accordance with the provisions of this Act, or stipulations or notifications issued by virtue of this Act, or conditions attached to the license, the Bank of Thailand shall have the power to take the following actions.

- (1) To issue written warnings to that financial institution or relevant persons to refrains from any action to be considered as a breach, or to comply with this Act.
- (2) To issue instructions to prohibit any action in violation of or to comply with the provisions of this Act or any prescription or notification issued by virtue of this Act or conditions attached to the license.
- (3) To issue an order to remove any or all directors, managers or persons with management authority. Such an order shall be regarded as a resolution of the shareholders' meeting.

In the case where directors, managers or persons with management authority being removed under (3), if any of such persons could prove that he/she is not involved or are not responsible for such conduct, the Bank of Thailand may reappoint such person to his former position.

## **Section 90**

Where condition or operation of any financial institution may cause damage to the public, the Bank of Thailand shall be empowered to take the following actions.

- (1) To order such financial institution to rectify the condition or operation.
- (2) To order such financial institution to decrease or increase its capital or both within a specific period but shall not exceed ninety days from the date the financial institution is notified. If such financial institution does not comply with or fails to comply with such order within the specified period, such order shall be deemed a resolution of shareholders' meeting from the deadline date of the order unless where urgency is necessary, in order to sustain the position or operation of the financial institution, the Bank of Thailand may order it to decrease or increase or both immediately. Such order shall be deemed a resolution of shareholders' meeting. The provisions of Section 1117, Section 1220, Section 1222, Section 1224, Section 1225, Section 1226 of the Civil and Commercial Code, and Section 136 paragraph Two (2), Section 137, Section 139 and Section 141 of the Public Company Limited Act, B.E. 2535 (1992) shall not apply to the capital write-down or increase, or the offering of additional shares.
- (3) To order such financial institution to temporarily suspend its business operations entirely or partially within a specified duration.

- (4) To order such financial institution to immediately remove any or all of its directors, managers or persons with management authority and appoint other persons to assume the positions in their places as appropriate. Such an order shall be regarded as a resolution of the shareholders' meeting.
- (5) To order such financial institution to be placed under control or to order its closure.

The Bank of Thailand shall report any action taken under paragraph one to the Minister of Finance without delay and if the Bank of Thailand has issued a closure under paragraph one (5), a proposal shall also be submitted to the Minister of Finance to revoke the license of such financial institution.

### **Section 91**

Person whose status as employee is terminated from being removed as a director, manager or person with management authority under Section 89 (3) or Section 90 (4) shall not be entitled to severance pay under the law governing labor protection or the law governing state enterprise labor relations, or any other right under employment contract due to dismissal except for the rights to benefits from the agreement under the law on retirement funds.

### **Section 92**

The following events shall be considered that the financial institution's standings or operation is such that it may cause damage to the public.

- (1) Such financial institution, any of its directors, manager or person with management authority violates order given under Section 89 (2).
- (2) Such financial institution, any of its directors, manager or person with management authority violates or fails to comply with Section 30, Section 33, Section 34, Section 48, Section 49, Section 50, Section 51, Section 57, Section 58, Section 59, Section 60, Section 61, Section 63, or Section 64.
- (3) Such financial institution, any of its directors, manager or person with management authority fails to keep its books of accounts to present truthful performance and financial standings in accordance with Section 66, or makes false entry or falsifies accounts, documents to the extent that such financial institution cannot be evaluated with regard to the soundness of its financial standings and operation in accordance with the regulations on capital funds, assets, liquid assets, provisioning, asset classification and other matters under this Act.
- (4) Such financial institution suspends repayment of its due obligations.
- (5) Such financial institution incurs losses and the Bank of Thailand has due reasons to anticipate that the financial institution may be incapable of maintaining its capital fund as required by law, regardless of whether it is the event under Section 96 or not.

### **Section 93**

Any financial institution suspended the repayment of its due obligations shall immediately notify the Bank of Thailand and shall not transact any further business unless a written authorization is granted by the Bank of Thailand.

The Bank of Thailand shall appoint a financial institution inspector to investigate the circumstances in accordance with paragraph one and shall, upon receiving the investigative report, be empowered to order such financial institution to be placed under control, to order its closure or to issue any order as deemed appropriate.

The Bank of Thailand shall, upon issuing a closure under paragraph two, propose to the Minister of Finance to revoke the license of such financial institution.

## **Section 94**

No financial institution shall make any of the following disbursements in money, property or compensation which would cause its capital funds to be lower than the amount required to be maintained in accordance with Section 30.

- (1) To disburse money or any other property to the shareholders as capital distribution.
- (2) To pay any remuneration with respect to management or any other perquisite that is not normal salary to any of its directors, manager or persons with management authority.

The Bank of Thailand may permit a financial institution to repurchase, redeem, release, or receive entitled shares or benefit as a shareholder, to the extent that it will reduce the financial institution's obligation or to rectify its financial standings.

## **Section 95**

In the case where a financial institution whose capital is lower than the required capital funds prescribed in Section 30, such financial institution shall submit a plan for to rectify its condition and operation to the Bank of Thailand for approval in accordance with the following rules.

- (1) The plan shall be submitted within sixty days from the date that financial institution becomes aware of such fact.
- (2) The plan under (1) shall at least consist of the following particulars.
  - (a) Steps to restore capital funds to an adequate level.
  - (b) Level of capital expected to be attained in each quarter during the duration of the plan.
  - (c) A business plan.
  - (d) Timeline of the plan which shall not exceed one year from the date that financial institution becomes aware of that its capital is lower than the required capital stipulated under Section 30.

Upon receiving the plan, the Bank of Thailand shall approve or reject the plan within thirty days from the day the plan is received and shall inform the financial institution within such time. In this regard, the Bank of Thailand may also prescribe any condition or deadline.

In the event that the financial institution fails to submit a plan within the time limit under (1), the proposed plan fails to receive an approval or the financial institution fails to proceed with the approved plan or in accordance with the conditions or deadlines stipulated by the Bank of Thailand in accordance with paragraph two, the Bank of Thailand shall be empowered to order the financial institution to take any action as deemed appropriate or to order the closure of such financial institution.

The Bank of Thailand, upon issuing a closure under paragraph three, shall propose to the Minister of Finance to revoke the license of such financial institution.

## **Section 96**

In the case where a financial institution's capital is lower than sixty percent of the rate stipulated under Section 30, the Bank of Thailand shall place the financial institution to be under control except where the Bank of Thailand deems that such order would create a serious impact or cause a severe damage to the overall economy or such financial institution shall be able to swiftly restore its capital to satisfy the legal level, the Bank of Thailand may then withhold its order to place the financial institution under control.

In addition to the proceeding under paragraph one, the Bank of Thailand may order the financial institution to terminate and liquidate its subsidiary's business if assets of the subsidiary are insufficient for the liabilities or the subsidiary is unable to service its debt for

more than three consecutive months. The Bank of Thailand may also issue any other order as deemed appropriate.

#### **Section 97**

In the case where a financial institution's capital is lower than thirty-five percent of the rate stipulated under Section 30, the Bank of Thailand shall order a closure of the financial institution except where the Bank of Thailand deems that such order would create a serious impact or cause a severe damage to the overall economy, then the Bank of Thailand may withhold the closure of the financial institution.

The Bank of Thailand, upon issuing a closure under paragraph three, shall propose to the Minister of Finance to revoke the license of such financial institution.

#### **Section 98**

Upon issuance by the Bank of Thailand an order to close any financial institution in accordance with Section 90 (5), Section 93, Section 95 or Section 97 and the Minister has revoked the license, the financial institution shall be liquidated.

#### **Section 99**

Upon issuance of any order to the financial institution to undertake any action or upon receiving any report on the financial institution under this Chapter, the Bank of Thailand shall report to the Minister without delay.

### **Chapter 6**

#### **Taking over the Control of Financial Institution**

#### **Section 100**

In this Chapter,

"Deposit Protection Agency" means the Deposit Protection Agency under the law governing deposit protection agency.

#### **Section 101**

Upon the Bank of Thailand ordering any financial institution to be placed under control, it shall notify the Deposit Protection Agency and the financial institution in writing. Notice of the order shall be posted in a public place at the premises of such financial institution including publishing it in the Government Gazette and any news media in accordance with the prescription in the notification of the Bank of Thailand.

In the case where the financial institution under paragraph one is a company listed on a securities exchange, the Bank of Thailand shall also notify the securities exchange in writing.

#### **Section 102**

Upon ordering any financial institution to be placed under control, the Bank of Thailand shall appoint a Conservator Committee consisted of a chairman and not less than two other committee members but not exceeding four, whereby the Deposit Protection Agency shall propose at least one member.

In the event that the chairman is unable to perform his/her duty, the Bank of Thailand shall appoint any committee member to act in his/her place.

Resolution of the committee is determined by a simple majority. One committee member is entitled to one vote. In the event of a draw, the chairman of the meeting shall be entitled to an additional vote as the determining vote.

### **Section 103**

Members of the Conservator Committee shall have the qualifications and shall not possess any of the prohibited characteristics as those of the directors of financial institutions as listed under Section 24. In addition, there shall be no conflict of interests with respect to their power and duty as members of the Conservator Committee.

Conservator Committee members shall have the same authority and duty as the directors of the financial institution.

### **Section 104**

Upon the Bank of Thailand given notice of the order to be placed under control to any financial institution, directors, officers and employees of such financial institution is prohibited from conducting further business of the financial institution unless so authorized by the Conservator Committee.

The Conservator Committee shall have the power to appoint one or more persons as conservator officer to perform any duty. The Conservator Committee has the power and duty to conduct the full activities of the financial institution placed under control. In addition, the chairman of the Committee shall serve as representative of such financial institution.

Directors, officers and employees of the financial institution placed under control shall:

- (1) Take actions to safeguard the assets and interests of the financial institution;
- (2) Report the affairs and deliver, without any delay, the assets including books and accounts, documents, corporate seals or other documents pertained to the business and assets of the financial institution to the Conservator Committee.

Any person in possession of any property or document of the financial institution shall notify the Conservator Committee thereof without any delay.

### **Section 105**

In the case where the Conservator Committee deems that deposits of the financial institution under control have excessively high and unfair interest obligation, the Conservator Committee with the consent of the Deposit Protection Board has the power to reduce such interest. However, depositor shall be notified first before commencing the interest rate reduction after seven days from the date of the announcement.

### **Section 106**

In the case where the Conservator Committee deems that contractual obligation of the financial institution under control is too excessive relative to the expected benefit, the Conservator Committee may negotiate with the respective property owner, counterparty or relevant parties to reduce such obligation.

### **Section 107**

In the event that the Conservator Committee deems that employment contract of the management of the financial institution under control contains in appropriate conditions or stipulates undue remuneration or benefits, or the financial institution under control suffers damages from the management or from the negligence in performing the duty of the executives of the financial institution, the Conservator Committee shall have the power to terminate the employment, suspend or reduce the remuneration or various benefits to such executives.

### **Section 108**

In the event that the Conservator Committee deems appropriate to merge or transfer the business of the financial institution, the merger or transfer of such business shall not be subject to provisions in Chapter 9: Amalgamation, Transfer or Termination of Business *mutandis mutatis*. Moreover, the resolution of the Conservator Committee shall be deemed as resolution of the shareholders' meeting and the Conservator Committee shall be empowered to act on behalf of the board of directors of such financial institution.

## **Section 109**

The Conservator Committee shall notify the Bank of Thailand whether the financial institution placed under control should continue its operation or not, including submitting supported financial figures and rationale within one hundred twenty days from the appointment date of the Conservator Committee unless extension is granted by the Bank of Thailand.

If the Conservator Committee deems that the financial institution should continue its business, the Conservator Committee shall submit a plan to rehabilitate such financial institution to the Bank of Thailand. The rehabilitation plan shall contain at the minimum the following particulars.

- (1) Steps to restore capital funds to an adequate level.
- (2) Level of capital expected to be attained in each quarter during the duration of the plan.
- (3) A business plan.
- (4) Timeline of the plan which shall not exceed one year from the date that financial institution becomes aware of that its capital is lower than the required capital stipulated under Section 30.
- (5) Plan to amalgamate or transfer the business (if any).

Upon receiving the report from the Conservator Committee under paragraph one, the Bank of Thailand shall report to the Minister of Finance without delay.

## **Section 110**

In the event that the Conservator Committee notifies the Bank of Thailand that the financial institution placed under control should continue its operation, the Bank of Thailand shall issue an order expressing its approval or rejection of such report within fifteen days from the date that the report is received from the Conservator Committee.

If the Bank of Thailand approves of the report of the Conservator Committee under paragraph one, the rehabilitation plan proposed by the Conservator Committee shall be undertaken. In this regard, an order may be issued to revoke the control. The notice of order shall be published in the Government Gazette and in any news media prescribed in the notification of the Bank of Thailand.

In the event that the Bank of Thailand issues an order to reject the plan proposed by the Conservator Committee or the plan to rehabilitate the financial institution is unable to proceed for any reason, the Bank of Thailand shall order the closure of such financial institution.

The Bank of Thailand, upon issuing a closure under paragraph three, shall propose to the Minister of Finance to revoke the license of such financial institution.

## **Section 111**

In the event that the Conservator Committee reports that the financial institution placed under control is unable to continue its operation, the Bank of Thailand shall order the closure of such financial institution and shall publish the notice in the Government Gazette and any new media as prescribed in the notification of the Bank of Thailand.

## **Section 112**

Upon issuance of the order to close the operation of any financial institution by the Bank of Thailand under Section 110 paragraph three or Section 111 paragraph one and the withdrawal of license by the Minister, the financial institution shall be liquidated.

## **Section 113**

In the event that a financial institution is placed under control or its license is withdrawn, persons who purchased preferred shares or other debt instruments or who acquired the

claiming rights of the debts of such financial institution after such an event are prohibited from offsetting the preferred shares, debt instruments or acquired claiming rights with the debts such persons owe the financial institution.

#### **Section 114**

To facilitate the taking of control of a financial institution under this Chapter, the Conservator Committee or the authorized conservator officer shall be empowered to instruct any person to testify, produce or deliver information, accounts, documents, corporate seals or other evidence pertained to the affairs and assets of the financial institution placed under control within the time limit set by the Conservator Committee or the conservator officer.

#### **Section 115**

The Conservator Committee members and conservator officers shall be remunerated as prescribed by the Bank of Thailand.

#### **Section 116**

Expenses and remuneration incurred in the course of taking control of any financial institution shall be disbursed from assets of such financial institution.

#### **Section 117**

Provisions under Chapter 3: Supervision of Financial Institutions with the exception of Division 8: Accounting, Reporting and Auditors shall not be applicable to the financial institution while placed under control in accordance with this Chapter.

#### **Section 118**

The Bank of Thailand, upon issuing an order to the financial institution to undertake any action or upon receiving reports pertained to the financial institution under this Chapter, shall report to the Minister without delay.

### **Chapter 7**

#### **Supervision of Specialized Financial Institutions**

#### **Section 119**

Specialized financial institutions are:

- (1) Financial institutions of the State established under special law;
- (2) Juristic persons established by special law as announced by the Minister.

#### **Section 120**

For the effectiveness in the supervision of the financial institution system, the Ministers having the charge of the laws on establishment of specialized financial institutions may delegate the Bank of Thailand to perform all of the following duties or in parts, in accordance with the law stipulated to be within the power and duty of the Minister in charge.

- (1) General supervision of activities of the specialized financial institutions.
- (2) Power to order explanations of facts and opinions as well as to order appointment of personnel to examine and report on the business or assets of specialized financial institutions.
- (3) Power to appoint or remove any person as stipulated by the law as well as to set the remuneration or any benefit to such person.
- (4) Prescription of any policy for the compliance or action of specialized financial institutions.



- (5) Power to order specialized financial institutions to act or refrain from acting against the policy of the Government or the resolution of the Cabinet.

In the supervision of the specialized financial institutions in accordance with paragraph one, the Bank of Thailand, upon consent from the Minister, may stipulate additional regulations for the compliance of specialized financial institutions or to subject specialized financial institution to any provision under this Act.

## **Chapter 8**

### **Penal Provisions**

#### **Section 121**

Any person conducting commercial banking business, finance business or credit foncier business without prior approval shall be subject to imprisonment from two to ten years and to a fine from two hundred thousand Baht to one million Baht.

#### **Section 122**

Any financial institution violated or failed to comply with Section 11 shall be subject to a fine of not more than one hundred thousand Baht and additional fine of not more than one thousand Baht per day while corrective action has not been taken.

#### **Section 123**

Any financial institution violated or failed to comply with Section 12 shall be subject to imprisonment of no more than one year or to a fine of not more than one hundred thousand Baht, or both and to additional fine of not more than one thousand Baht per day while such violation persists.

#### **Section 124**

Any financial institution violated or failed to comply with Section 13, Section 15 paragraph one, Section 37, Section 81 or Section 82, or violated or failed to comply with notifications, prescriptions or regulations prescribed by virtue of Section 15 paragraph two, Section 26 paragraph one, Section 37 or Section 82 shall be subject to a fine of not more than three hundred thousand Baht and additional fine of not more than three thousand Baht per day while such violation persists or until corrective action has been taken.

#### **Section 125**

Any financial institution violated or failed to comply with Section 20, Section 21 paragraph one, Section 22, Section 38, Section 40 paragraph one, Section 41, Section 44, Section 47 or Section 84, or violated or failed to comply with notifications, prescriptions or regulations prescribed by virtue of Section 38, Section 39, Section 40 paragraph two, Section 41, Section 46, Section 47 or Section 84 shall be subject to a fine of not more than five hundred thousand Baht and additional fine of not more than five thousand Baht per day while such violation persists or until corrective action has been taken.

#### **Section 126**

Any person violated or failed to comply with Section 14, Section 54 or Section 56 or the parent company of financial institution violated Section 55 shall be subject to imprisonment from six months to three years or to a fine from sixty thousand Baht to three hundred thousand Baht, or both and to additional fine of not more than three thousand Baht per day while such violation persists, as the case may be.

#### **Section 127**

Any person violated or failed to comply with Section 26, shall be subject to a fine from sixty thousand Baht to three hundred thousand Baht and to additional fine of not more than three thousand Baht per day until corrective action has been undertaken.

### **Section 128**

Any financial institution violated or failed to comply with Section 16, Section 24, Section 25 paragraph one, Section 29, Section 30, Section 31, Section 32, Section 34, Section 35, Section 36, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 68, Section 71, Section 73 paragraph one, Section 74, Section 78, Section 80, Section 93, Section 94 or Section 95, or violated or failed to comply with notifications, prescriptions or regulations prescribed by virtue of Section 9, Section 10 paragraph one, Section 16, Section 29, Section 30, Section 31, Section 32 paragraph one, Section 33, Section 34, Section 35, Section 36, Section 42, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 71, Section 73 paragraph one, Section 74 paragraph two, Section 78, Section 80, Section 89, Section 90 (1), (3) and (4) , Section 95 or Section 96 shall be subject to a fine of not more than one million Baht and additional fine of not more than ten thousand Baht per day while such violation persists or until corrective action has been taken.

### **Section 129**

In the case of an offense under Section 20, Section 21, Section 22, Section 34, Section 48, Section 49, Section 50 or Section 59, as the case may be, where the financial institution is able to prove that circumspection is exercised in examining nominees but it is still unaware and unable to prevent such violation, it shall be deemed that the financial institution has not committed any violation under such Sections.

### **Section 130**

Any person violated or failed to comply with Section 56 or Section 57, shall be subject to a fine of not more than one million Baht and to additional fine of not more than ten thousand Baht per day while such violation persists or until corrective action has been undertaken.

### **Section 131**

Any person violated or failed to comply with Section 104 or failed to comply with the order of the Conservator Committee or conservator officer under Section 114 shall be subject to imprisonment of not more than three years or to a fine of not more than three hundred thousand Baht or both, and subject to additional fine of not more than three thousand Baht per day while such violation persists.

### **Section 132**

In the case where the offender of Section 121 or Section 123 is a juristic person, or its directors, managers or persons with management authority, he/she shall also be subject to the penalty stipulated for such an offense unless it could be proven that he/she has no part in the commission of such offence.

Under the provision of Section 139, in the case that a financial institution committed an offense under Section 122, Section 124, Section 125 or Section 128, the directors, manager or person with management authority of such financial institution shall be subject to penalty stipulated for such an offense unless it could be proven that he/she has no part in the commission of such offence.

### **Section 133**

Offense under Section 122, Section 124, Section 125, Section 128 and Section 132 paragraph two, if a legal proceeding has not been undertaken or a fine is not assessed under Section 156 within two years from the date that the Bank of Thailand discovers the offense or within five years of the date the offense is committed, it shall be deemed that its period of prescription has expired.

### **Section 134**

Whoever gave false statement to the financial institution inspector or the Conservator Committee which may cause damage to another person or the public shall be subject to

imprisonment of not more than six months or a fine of no more than sixty thousand Baht or both.

#### **Section 135**

Whoever obstructed or failed to comply with the orders of the financial institution inspector, the Conservator Committee or the conservator officer in the performance of his/her duty under this Act, shall be subject to imprisonment of a term not exceeding one year and a fine not exceeding one hundred thousand Baht or both.

#### **Section 136**

Whoever failed to facilitate the mission of the financial institution inspector, person under Section 85 paragraph three, Conservator Committee or conservator officer in the performance of his/her duty under this Act, shall be subject to imprisonment of a term not exceeding one year and a fine not exceeding one hundred thousand Baht or both.

#### **Section 137**

Whoever removed, damaged, destroyed, or rendered useless any seal or mark which a financial institution inspector, Conservator Committee or conservator officer has affixed or placed on any article, shall be subject to imprisonment of a term not exceeding three year and a fine not exceeding three hundred thousand Baht or both.

#### **Section 138**

Whoever damaged, destroyed, concealed, took away, lost or rendered useless any property or document which a financial institution inspector, Conservator Committee or conservator officer seized, attached, kept, or ordered to be submitted as evidence or for execution of the law, whether the competent officer kept such property or document by himself or ordered such person or any other person to submit or to keep it, shall be subject to imprisonment of a term not exceeding three year and a fine not exceeding three hundred thousand Baht or both.

#### **Section 139**

In the case where a financial institution violates or fails to comply with Section 36, Section 50, Section66, Section 80, Section 93, Section 94 or Section 95 or violates or fails to comply with notifications, prescriptions or regulations prescribed by virtue of Section 9 paragraph one, Section 10 paragraph one, Section 33, Section 36, Section 50, Section66, Section 71, Section 80, Section 90 or Section 95, the directors, managers or persons with management authority of such financial institution shall be subject to imprisonment of a term not exceeding one year and a fine from five hundred thousand Baht to one million Baht or both unless it could be proven that he/she has no part in the commission of such offence.

#### **Section 140**

Any director, manager, or person with management authority of any financial institution wrongfully deceives the public by disclosing false statements or conceal facts of which the public is entitled to be aware and through such deception, he/she obtains properties from the public, deceived party or any third party, or causes such the public, deceived party or any third party to act, withdraw or destroy document of rights; such person shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

#### **Section 141**

Any director, manager, or person with management authority of any financial institution assigned to manage assets of the financial institution or those jointly owned by the financial institution, commits any wrongful act in his/her line of duty causing lost of benefits to the assets of the financial institution, shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

### **Section 142**

Any director, manager, or person with management authority of any financial institution acquires, for his own or for a third parties, the possession of assets belonged to the financial institution or jointly owned by the financial institution through embezzlement, shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

### **Section 143**

Any director, manager, or person with management authority of any financial institution removed, caused damage, destroyed or rendered useless any asset of the financial institution which he/she is responsible for or which is under the possession of the financial institution and such act caused damage to others or the public, shall be subject to an imprisonment term of no more than five years and a fine of no more than five hundred thousand Baht.

### **Section 144**

Any director, manager, or person with management authority of any financial institution committed any of the following acts from knowing that the creditor of the financial institution or the creditor of another party intended to exercise the right as the creditor of the financial institution to enforce debt repayment from the financial institution, or to exercise or likely to exercise the right to claim through the court for debt repayment in order to prevent such creditors to receive any or all debt repayment, shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

- (1) Removing, concealing or transferring to other person the assets of the financial institution, or
- (2) Recording in the accounts or performing any act to cause it to appear as if the financial institution is falsely indebted.

### **Section 145**

Any director, manager, or person with management authority of any financial institution committed or refrained from any act in order to unduly gain benefits under the law for his/her own or for another which caused damage to the financial institution, shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

### **Section 146**

Any director, manager, or person with management authority of any financial institution committed or permitted any of the following acts in order to deceive the financial institution or its shareholders to lose due benefits or to deceive any person, shall be subject to an imprisonment term from five to ten years and subject to a fine from five hundred thousand Baht to one million Baht.

- (1) Damaging, destroying, altering, deleting or forging accounts, documents or security of or related to the financial institution.
- (2) Making false record or failing to make crucial record in the accounts or documents of the financial institution; or
- (3) Preparing incomplete, incorrect or not up-to-date accounts.

### **Section 147**

Any offense under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145 or Section 146, if committed by an officer of a financial institution, he/she shall be subject to the penalty stipulated for such an offense.

### **Section 148**

Any auditor, assessor or any expert who audits the accounts for the purpose of expressing an opinion on the financial statements, fails to act in accordance with the law governing

auditors or additional rules stipulated by the Bank of Thailand, or prepare false report, violate or fails to comply with Section 69, Section 70 or Section 71, or deceitfully assesses property value, as the case may be, shall be subject to an imprisonment term of no more than three years or a fine of not more than five hundred thousand Baht, or both.

#### **Section 149**

Whoever caused a director, a manager or a person with management authority or specialist of a financial institution to commit an offense stipulated under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, regardless of whether by employing, ordering, threatening, hiring, or by any other method, shall be subject to the penalty stipulated for such an offense.

#### **Section 150**

Whoever acted in any way to assist or abet a director, a manager or a person with management authority, an auditor or specialist of a financial institution to commit any offense stipulated under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, either antecedent or during the commission of the offense, shall be subject to the penalty stipulated for such an offense unless he/she is not aware of such assistance or abetment.

#### **Section 151**

The public prosecutor, upon instituting criminal prosecution for any offense under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, Section 148, Section 149 and Section 150, shall be empowered to claim restitution of the property or the value thereof or damages on behalf of the injured party and shall be exempted from court fees.

#### **Section 152**

In the case where any person committed an offence under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, Section 148, Section 149 and Section 150 and the Bank of Thailand deems that, if continues, it may damage public interest, the Bank of Thailand shall have the power to order the seizure or attachment of properties of such person, or properties which may legally be deemed to belong to such person or, by conduct, may be reasonably believed to belong to such person. The seizure or attachment may not be longer than one hundred eighty days unless a case is brought to court, then such property shall be seized or attached until the court orders otherwise. Where circumstances render it impossible to file the case within one hundred eighty days, the court of the jurisdiction may extend the period as petitioned by the Bank of Thailand.

The Bank of Thailand shall be empowered to appoint an official of the Bank of Thailand to seize or attach the properties under the paragraph one.

The procedures for the seizure or attachment of property and the setting of a stipend necessary for a living and caring of the family of the person whose properties are seized or attached under paragraph one shall be in accordance with the regulation stipulated in the notification of the Bank of Thailand.

Whoever damaged, removed, concealed, took away, lost or rendered useless, transferred to another party, or acted in any way to damage the seized or attached properties under paragraph one, shall be subject to an imprisonment term of not more than ten years or a fine of not more one million Baht.

#### **Section 153**

Where there is a due cause to suspect that the person under Section 152 shall abscond from the Kingdom, the criminal court upon petitioned by the Bank of Thailand shall have the power to issue a order prohibiting such person from leaving the Kingdom.

In the case of emergency, the National Police Chief upon request of the Governor of the Bank of Thailand or any person authorized by the Bank of Thailand shall have the power to temporarily prohibit such person under Section 152 from leaving the Kingdom for a period not exceeding fifteen days until the criminal court shall rule otherwise.

Whoever violated the order of the criminal court under paragraph one or order of the National Police Chief under paragraph two, or lent assistance to such person shall be subject to an imprisonment term of not more than ten years or a fine of not more one million Baht.

#### **Section 154**

Whoever, in the performance of his/her duty under the authority prescribed under the law or from assisting those performing their duties under the authority prescribed under the law, is privy to any activity of a financial institution that in a normal business is to be kept confidential divulges such information to another person, he/she shall be subject to an imprisonment term of not more than one year or a fine of not more than one hundred thousand Baht or both.

Provision under paragraph one shall not be applicable to disclosure under the following circumstances.

- (1) Disclosure in the performance of his/her duty or for investigation or trial purpose.
- (2) Disclosure of an offense under this Act.
- (3) Disclosure to the auditor of the financial institution or to a supervisory authority, local or abroad, of such financial institution.
- (4) Disclosure of information to facilitate the duty of the local or foreign supervisory authority of the financial institution or of finance related business in accordance with the treaty between each other.
- (5) Disclosure for the purpose of rectifying the operation of the financial institution.
- (6) Disclosure for the purpose of granting credits of the financial institution.
- (7) Disclosure of confidential information of a client of the financial institution that had already been disclosed to the public.
- (8) Disclosure of confidential information of a client of the financial institution with the consent of the client.
- (9) Disclosure to companies within the same finance related business group.
- (10) Disclosure for compliance purposes in accordance with the law.

#### **Section 155**

Whoever, became aware or obtained confidential information of the financial institution due to his/her status as a person with management authority or as an officer and divulge such confidential information in a manner that may cause damage to another person or the public, shall be subject to an imprisonment term of not more than one year or a fine of no more than one hundred thousand Baht or both.

Provision under paragraph one shall not be applicable to any disclosure under Section 154, paragraph two.

#### **Section 156**

For any offense under Section 122, Section 124, Section 125, Section 128, Section 132 paragraph two and Section 139, the committee appointed by the Minister shall be empowered to settle out of court.

The committee appointed by the Minister under paragraph two shall consist of three members, one of whom shall be an investigating officer under the Criminal Procedure Code.

Where a case has been settled by such committee and the alleged offender has the fine fully and within the specified period set by the committee, such settlement shall be deemed as settled under the Criminal Procedure Code.

## **Transitional Provisions**

### **Section 157**

Commercial banks, finance companies, and credit foncier companies licensed, prior to the enforcement of this Act, to undertake commercial banking, finance business or credit foncier business, as the case may be, shall be deemed as licensed financial institution to undertake such business under this Act.

### **Section 158**

All ministerial regulations, notifications of the Ministry of Finance and notification as well as circulars, order or prescription of the Bank of Thailand under the law regarding commercial banking business, finance business and credit foncier business, applicable prior to the enforcement of this Act shall remain applicable to the extent that they are not conflicting with the provisions under this Act, and until notifications or orders are issued under this Act.

### **Section 159**

Any financial institution has been granted a relaxation to invest, purchase or hold shares in excess of the ratio under Section 34 prior to the enforcement date of this Act, such financial institution shall retain the right to continue hold or possess such shares in accordance with the conditions of the relaxation granted. However, it shall not exceed the prescribed limit of five years started from the enforcement date of this Act.

In the case where any financial institution has been granted a relaxation to extend credits, invest, incur contingent liabilities, or undertake credit-like transaction in excess of the ratio under Section 50 prior to the enforcement date of this Act, such financial institution shall be able to continue extending credits, investing, incurring contingent liabilities or undertaking credit-like transactions in accordance with the contractual commitments until the repayment is due as specified in such agreements.

Any financial institution granted credits, invested, incurred contingent liabilities or undertook credit-like transaction to any person and his/her related persons, in aggregate, in excess of the ratio prescribed under Section 50 prior to the enforcement date of this Act, where such granting of credits, investments, contingent liabilities or credit-like transactions did not violate the law governing commercial banking or the law governing finance business, securities business and credit foncier business being enforced during such period, such financial institution shall not grant any further credits, investments, contingent liabilities or credit-like transactions to such a person or his/her related persons and shall take action to reduce such credits, investments, contingent liabilities or credit-like transactions to comply with the provisions under Section 49 or Section 50 promptly. However, it shall not exceed five years from the enforcement date of this Act.

Any financial institution is granted a relaxation to hold immovable property prior to the date of enforcement of this Act; such financial institution may continue to hold the immovable property in accordance with the conditions of the granted permission.

### **Section 160**

Any finance company received a licensed prior to the date of enforcement of this Act shall be permitted to conduct businesses as licensed.

### **Section 161**

Any company not engaging in finance related business but is permitted, prior to the date of enforcement of this Act, to hold shares in any financial institution in excess of the ratio stipulated under Section 18 shall be able to continue to hold the shares of such financial institution and may acquire shares from capital increase in order to maintain the shareholding ratio held prior to the date of enforcement of this Act. However, if any of the shares was to be disposed, then the entitlement to hold shares in excess of the stipulated ratio shall be equivalent to the number of the remaining shares.

Companies under paragraph one are prohibited to acquire shares of the financial institution in addition to their existing portion after the relaxation period under paragraph one has expired.

### **Section 162**

Any person holding shares or possessing shares of any financial institution in excess of the stipulated ratio under Section 18 due to the inclusion of shares held or possessed by its nominees prior to the date of enforcement of this Act whereby such shares held or acquired did not violate the governing laws at such time, shall be able to continue to hold or possess the shares. However, if any of the shares was to be disposed, then the entitlement to hold shares in excess of the stipulated ratio shall be equivalent to the number of the remaining shares. In addition, such person shall take action regarding shares held or possessed to comply with the provision under Section 18 promptly and shall not exceed five years from the date of enforcement of this Act.

### **Section 163**

In the interim period while the Deposit Protection Agency has not been established, if any provision under this Act prescribes the duties and authorities of the Deposit Protection Agency, such duties and authorities shall be exercised by the Ministry of Finance until the Agency is established.

Countersigned by

General Surayud Chulanont

Prime Minister

### **Remark:**

The rationale for promulgation of this Act is that at present the supervision of commercial banking business, finance business and credit foncier business is under the law governing commercial banking and the law governing finance business, securities business and credit foncier business, as the case may be, causing the supervisions to be different. However, financial institutions operations should of the same standards. Furthermore, in the earlier period Thailand was facing severe economic crisis which directly impacted financial institutions and affected the confidence of the public and depositors on the overall financial institution system. Hence, it is deemed appropriate to improve the standard of supervision of financial institution to become more effective as well as to improve the law governing commercial banking and the law governing finance business, securities business and credit foncier business and to consolidate them into one such that the supervision and monitoring will be of the same standard. The penalty clauses have also been amended to be more suitable to corresponded offenses. This Act is therefore enacted.

### **Disclaimer**

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