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Thailand

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Thailand.

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THAILAND BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Bank of Thailand (“BoT”) is the main national authority that supervises, examines, and analyzes the financial status and performance, and risk management systems of financial institutions, as empowered by the Minister of Finance (“Minister”) under the Financial Institutions Businesses Act B.E. 2551 (A.D. 2008), as amended (“FIB Act”).

2. Which type of activities trigger the requirement of a banking licence?

The regulated financial institutions businesses requiring a license in Thailand comprise (i) commercial banking business, (ii) finance business and (iii) credit foncier business.

Commercial banking business is defined as the undertaking of business of accepting deposits of money or accepting money from the public subject to withdrawal 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 or selling of bills of exchange or any other negotiable instruments, buying and selling of foreign exchange.

Finance business is the undertaking of business of accepting deposits of money or accepting money from the public subject to withdrawal on demand or at the end of a specified period, which is not accepting deposits of money or accepting money in the accounts to be withdrawn by cheques, and of employing such money in one or several ways such as granting of credits, buying or selling of bills of exchange or any other negotiable instruments.

Credit foncier business means the undertaking of business of accepting deposits of money or accepting money from the public subject to withdrawal at the end of a specified period and of employing such money in

one or several ways listed below:

(1) lending money by way of taking mortgage of immovable property;

(2) buying immovable property by way of sale with right of redemption.

Under the FIB Act (Section 9), commercial banking business, finance business and credit foncier business may be undertaken only by a juristic person (legal entity) which is a public limited company after obtaining a license from the Minister on the advice of the BoT. In granting such license, the Minister may prescribe such rules as are deemed appropriate.

3. Does your regulatory regime know different licenses for different banking services?

Commercial banks under the FIB Act are classified as (i) a public limited company incorporated in Thailand and licensed to undertake commercial banking business (or Thai commercial bank), (ii) a retail bank, (iii) a commercial bank which is a subsidiary of a foreign commercial bank, and (iv) a branch of a foreign commercial bank licensed to carry on commercial banking business. There are different licensing requirements for each type of commercial bank.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

No. A commercial bank must undertake only commercial banking business and business incidental to or necessary for undertaking commercial banking business as prescribed in the notifications of the BoT. Activities currently covered by BoT notifications include e-money services, securities business (excluding equities), trustee activities, escrow agent, insurance brokerage business, etc.

On 1 August 2019, BoT announced an increase in the scope of commercial banking business to include IT related services to support digital banking under 2 guiding principles i.e. (1) it must be a business incidental to or necessary for the undertaking of commercial banking business and to support digital banking and (2) the commercial bank must be prepared to engage in the business, based on the commercial bank's expertise, and must give importance to risk management, security of work systems and data, to comply with laws, international standards and appropriate consumer protection.

On 15 May 2020, in order to allow greater agility in business operations and to support the development of financial services, the BoT further expanded the businesses that commercial banks may undertake, by giving general permission for commercial banks to provide other services to their customers such as cash management, acting as an agent or consultant or providing advice and providing services related to financial services which they provide for themselves, and also providing services to other financial institutions which they provide for themselves that are not related to financial services.

5. Is there a “sandbox” or “license light” for specific activities?

BoT has recently issued a guideline for a regulatory sandbox for FinTech on 11 March 2019 (which became effective on 15 March 2019) in place of the previous guideline of 2016, in order to improve the regulatory sandbox.

Under the guideline commercial banks and other financial institutions must bring innovations to be tested with the BoT with respect to common infrastructure / standards e.g. QR codes, which were tested before with the BoT and with respect to the relevant laws required to be tested in the regulation sandbox e.g. transactions related to digital assets of financial institutions.

On 1 October 2019, BoT issued the guideline of the Regulatory Sandbox for the government owned financial institutions or so called Specialized Financial Institutions (“SFIs”) to be in line with the developed guideline in order that the SFIs may develop their Fintech for the customers.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or

voluntary moratorium?

BoT has issued the Notification Re: Guideline to Undertake Digital Asset Business of Financial Institutions and Companies in Financial Business of the Financial Institutions dated 1 August 2018.

Under the Notification, companies engaged in financial business (except financial institutions) are allowed to undertake digital assets business under specific conditions e.g. the financial institution which is the parent company must apply for a prior approval from the BoT (in case no specific regulator supervises the member of the financial business group engaging in the digital assets business) and the financial institution which is the parent company must monitor the overall risks of the financial business group.

The Notification prohibits financial institutions from being an initial coin offering issuer (ICO Issuer), investing in or acting as an exchange or broker dealer of digital assets, etc. However, if a financial institution wishes to be an ICO Issuer or invest in digital assets, for the purpose of developing FinTech or increasing efficiency and quality of customers' services, it must enter a testing process under the guideline for regulatory sandbox.

7. What is the general application process for bank licenses and what is the average timing?

The FIB Act provides a general application process for applying for a commercial banking license. The commercial banking business may be undertaken only by a juristic person which is a public limited company after obtaining a license from the Minister with the advice of BoT. In granting such license, the Minister may prescribe such rules as are deemed appropriate.

Filing an application for formation of a public limited company under the law on public limited companies to undertake the Commercial Banking Business requires the prior approval of the Minister.

After incorporation of the public limited company, it must file with the Minister through the BoT an application for a license according to the form prescribed in the notification of the BoT.

The application for and issuance of a license shall be in accordance with the rules and subject to payment of fees as prescribed by the Minister in a notification with the advice of the BoT.

It is not possible to determine an average timing, as it

depends on the economic situation and policy of the Minister and the BoT as to whether there should be any new commercial bank in Thailand and in which category. Moreover, it will also depend on the quality of the initial application paperwork and the overall merits of the application, as determined by Minister and BoT. Based on past experience, it would be prudent for an intended applicant to allocate between 6 to 12 months for the entire process.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

There is no restriction on foreign financial institutions lending to Thai borrowers cross border. However a foreign financial institution cannot solicit for deposits in Thailand, as this would amount to carrying on a commercial banking business or finance business without a license.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

See response in item 7 above.

10. What are the organizational requirements for banks, including with respect to corporate governance?

There are extensive organisational and governance requirements imposed on financial institutions including commercial banks. Since 2008, BoT has issued Policy Statements on Internal Audit which include corporate governance. Recently, these have been largely set out in the Notifications on Corporate governance of Financial Institutions and Guidelines on Approvals of the Appointment of Directors, Managers, and Persons with Power of Management or Advisors of Financial Institutions, issued on 22 May 2018 (as amended on 20 August 2018).

In summary, the Notifications impose requirements on the composition of the financial institution's board of directors, and for the establishment of various board committees.

To promote the balance of power within the board of directors, the chairman of the board of directors must be an independent director or non-executive director, unless approved otherwise by the BoT; in giving the approval, the BoT may impose conditions to ensure that

the financial institution has in place a mechanism that promotes the balance of power within the board of directors.

These notifications and guidelines are in accordance with the Corporate Governance Principles for Banks of the Basel Committee on Banking Supervision (BCBS).

11. Do any restrictions on remuneration policies apply?

The essence of the Notifications mentioned in item 10 above is to enhance the responsibilities of directors and senior executives in overseeing risks and promoting good corporate governance in the organizations, for instance, building and fostering a risk culture, which includes having a remuneration policy that reflects the risk culture.

The board of directors has the duty and responsibility to formulate the important strategies and policies and oversee that the financial institution has appropriate remuneration policy so that it attracts and helps maintain quality staff, and ensures staff loyalty, while the remuneration structure must also promote a suitable risk culture. Duties and responsibilities of the board of directors relating to an effective remuneration structure are also specified in the Notifications.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

The BoT has generally implemented the Basel III framework with respect to regulatory capital for commercial banks, excluding branches of foreign commercial banks.

13. Are there any requirements with respect to the leverage ratio?

The BoT issued a notification with respect to guideline for calculating leverage ratio pursuant to Basel III since 2012. Under this notification, the BoT asks the commercial banks to submit calculations of leverage ratio on a standalone basis so that the BoT can establish the appropriate regulations in the future. We understand that the leverage requirements (3% of total exposures without any weighting) will come into force in 2022.

14. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Thailand has implemented the Basel III liquidity requirements. The BoT has issued the notifications with respect to liquidity coverage ratio requirements since 2015 (to be implemented in full by 2020) and the relevant notification in relation to the net stable funding ratio in 2018. On 6 April 2020, the BoT issued a Notification to conform LCR requirements to other amended notifications.

15. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Commercial banks as well as their holding companies which are parent companies of a financial business group are required to prepare and announce their financial statements after every 6 month and 12 month period under the Notification of BoT (except branches of foreign commercial banks, for which the requirement is after every 12 month period). If the shares of the commercial bank or its parent are listed on the Stock Exchange of Thailand there will also be a requirement under SEC rules for quarterly reporting.

16. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Yes. The BoT, as the home supervisor of financial business groups, adopts an integrated supervisory approach, evaluating the financial business groups on a whole-of-group basis, taking into account all of their banking, insurance, securities activities and other businesses as stipulated by BoT. Financial business groups are also supervised on a consolidated basis, with both local and overseas operations taken into consideration.

For branches of foreign commercial banks, this regulation does not apply.

17. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

The FIB Act requires that any person who directly or indirectly holds or possesses five per cent or more of the total issued shares of a financial institution shall report

the holding or possession of the shares to the BoT in accordance with the rules prescribed in the notification of the BoT.

The number of shares referred to in the first paragraph shall include the shares held or possessed by related persons of the person referred to in the first paragraph.

The shares referred to in the first paragraph shall not include preferred shares without voting rights.

In addition, the FIB Act provides that no person shall directly or indirectly hold or possess more than ten per cent of the total issued shares of a financial institution, except with permission from the BoT or in accordance with the rules prescribed in the notification of the BoT.

The number of shares under the above paragraph shall include the shares held or possessed by related persons of the person under the first paragraph. The shares shall not include preferred shares without voting rights.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

There is no specific provision under the FIB Act regarding conditions for eligible owners of commercial banks. However, the FIB Act imposes characteristics for directors, managers and persons with power of management.

The appointment of a director, manager, person with power of management or advisor of a financial institution requires the prior approval of the BoT, irrespective of whether it is the appointment of a new person or reappointment of the same person.

19. Are there specific restrictions on foreign shareholdings in banks?

Yes. Not less than seventy-five per cent of the total number of issued voting shares of a financial institution must be held by persons of Thai nationality and the number of its directors who are persons of Thai nationality must not be less than three-fourths of the total number of directors.

Where the BoT deems appropriate, the BoT may permit persons of non-Thai nationality to hold up to forty-nine per cent of the total number of issued voting shares, and may permit the number of directors of non-Thai nationality to be more than one-fourth but less than one-half of the total number of directors.

Where it is necessary to rectify the operation's condition or to enhance the stability of any financial institution or for the stability of the financial institution system, the Minister may, with the advice of the BoT, grant relaxation for any financial institution to have the number of shares or directors other than that prescribed in the second paragraph. In this regard, conditions as a "sunset clause" on the relaxation may also be prescribed.

20. Is there a special regime for domestic and/or globally systemically important banks?

The BoT adopted a supervisory framework for Domestic Systemically Important Banks (D-SIBs). In 2017, BoT has issued a press release on regulations on supervision of domestic systemically important banks by requiring them to maintain higher capital to better absorb losses from their operations.

Based on the indicators prescribed by BoT, 5 commercial banks are identified as D-SIBs, namely Bangkok Bank, Krung Thai Bank, Bank of Ayudhya, KASIKORNBANK, and the Siam Commercial Bank.

D-SIBs are required to maintain additional 1% of common equity tier 1 above the current minimum requirement. This new requirement will be phased in starting at 0.5% in January 2019 moving to 1% in January 2020. Additionally, D-SIBs are subject to more rigorous supervisory measures, such as, additional reporting requirements. Presently, all D-SIBs are robust, maintaining capital ratios significantly above the level prescribed by BOT.

21. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

This would depend on the particular provision or requirement that is violated as specified in the FIB Act and the relevant notifications.

The FIB Act provides penal provisions for any person, financial institution and/or a director, manager or person with power of management of such financial institution. The actions/violation include, but are not limited to, undertaking commercial banking business without a license, failure to comply with shareholding requirement and failure to comply with operational requirements under the FIB Act

The penalties include a one-time fine, a fine until rectification has been made, imprisonment or both.

22. What is the resolution regime for banks?

The FIB Act provides that in the event that the condition or operation of a financial institution may cause damage to the public interest, the BoT shall have various powers, including, but not limited, to (i) order the financial institution to rectify the condition or operation; (ii) order the financial institution to reduce its capital, increase its capital, or both, within the time specified, which shall not be more than 90 days from the date the financial institution received the order. If the financial institution fails to act or is unable to comply within the specified period, the order shall be deemed to be a resolution of the shareholders meeting as from the expiry date of such order, except that where there is an urgent need to maintain the condition and operation of the financial institution, the BoT may order the financial institution to reduce its capital, increase its capital, or both, immediately. Such an order shall be deemed a resolution of the shareholders meeting; (iii) order the financial institution to suspend its business operations entirely or in part for a temporary period within the time prescribed; (iv) order the financial institution to immediately remove any or all of its directors, managers or persons with power of management and appoint other persons to replace the persons so removed as deemed appropriate. Such an order shall be deemed a resolution of the shareholders meeting; and (v) order the control or closure of business of the financial institution.

The BoT is required to report the steps taken above to the Minister for information without delay. If the BoT issues an order closing a business as mentioned above, it shall propose to the Minister the revocation of the license of the financial institution.

23. How are client's assets and cash deposits protected?

Under the Deposit Protection Agent Act of Thailand ("DPA Act") in which the deposits of the customers are protected from the closure of a financial institution under the terms and conditions therein provided. Currently, all deposits with the Financial Institutions (all commercial banks, finance companies and credit foncier companies) of a customer are protected up to Baht 10 million (for the period of 11 August 2018 - 10 August 2019), Baht 5 million (for the period of 11 August 2019 - 10 August 2020) and Baht 1 million (for the period after 10 August 2020).

Without prejudice to the DPA Act, the FIB Act also provides that, after the BoT has given the notice of the order of control to a financial institution, the directors,

officers and employees of the financial institution shall be prohibited from continuing the conduct of business of that financial institution, unless otherwise authorized by the financial institution control committee (as appointed by BoT under the FIB Act) ("**Committee**").

The Committee shall be empowered to appoint one or more financial institution control officers to do any act. The Committee shall have the powers and duties to carry on the business in all respects of the financial institution placed under control. The chairman of the Committee shall be the representative of such financial institution.

The directors, officers and employees of the controlled financial institution shall, for example, (1) manage in order to protect and maintain assets and benefits of the financial institution; (2) report the business and surrender assets together with information, accounts, documents, etc. related to the business and assets of the financial institution to the Committee without delay. A person possessing properties or documents of the financial institution shall notify the Committee of his possession without delay.

24. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

No. Under the FIB Act, as part of taking control of a financial institution if the condition or operation of the financial institution may cause damage to public interest, in case the financial institution control committee considers that the deposits of the controlled financial institution have unreasonably high and unjust interest, the financial institution control committee, with the approval of the Deposit Protection Agency Board, is authorized to reduce the rate of such interest, provided that it shall be announced to depositors and the reduction interest rate shall be commenced after the expiration of seven days from the date of announcement.

In addition, in case the financial institution control committee considers that the contractual obligations of the controlled financial institution exceed the benefits receivable, the financial institution control committee may enter into an understanding with the property owner, contractual party or person concerned to reduce such obligations.

25. Is there a requirement for banks to hold gone concern capital ("TLAC")?

No. According to Basel III, BoT provides the gone concern

basis in the criteria for calculation of financial instrument to be Tier 1 and for Tier 2 as per recent notification issued in 2015. In order to qualify under Basel III, any instrument must be mandatorily converted into shares or written off when the bank reaches the point of non-viability- this is a gone concern requirement.

26. In your view, what are the recent trends in bank regulation in your jurisdiction?

Financial institution regulations reform has been implemented by BoT since 2018 to support the digital financial service system and in order to be able to use technology in the financial system more fully which will continue to develop financial innovation, to increase financial service efficiency and to reduce the cost and burden on consumers.

In supporting the digital financial service system, the BoT has relaxed its regulations on granting approval for utilizing technology and new types of financial services e.g. Cloud computing, etc, as well as to improve guidelines on the regulatory sandbox to make it more efficient.

As from January 2019, BoT relaxed regulations to promote international money transfer business, especially the criteria that the foreigners may hold up to 75% of the paid up capital, due to the reason that there are limited operators in Thailand. International money transfers can be made via commercial banks and money transfer agents (currently 5 licensees only). Moreover, the fees are quite high. BoT aims to increase the operators in the market to generate more competition, to reduce fees and to accommodate the customers entering into the transaction through mobile phones. This relaxation would help the transfer of money overseas flexibly, including to overseas Thai workers, foreign workers in Thailand, merchants near borders and SMEs, especially, hotels and tour businesses. This is one of the trends in the banking regulations of the BoT which have developed from the success of local e-payment.

In the fourth quarter of 2019, BoT supported the outflow of investment by relaxing criteria for overseas investment in securities as well as uplifting the requirements on supporting documents for normal or routine FX transactions.

On 6 January 2020, BoT issued regulations to support Small and Medium Enterprises (SMEs) such as providing the criteria on restructuring debts of SMEs.

Since the emergence of COVID-19, the BoT has supported commercial banks in relation to the

compromising of debts, especially credit card debt and personal loans. The BoT has also cooperated with the Legal Execution Department of the Ministry of Justice to expedite insolvency processes for the benefit of all parties in order to get through the COVID-19 crisis.

27. What do you believe to be the biggest threat to the success of the financial sector

in your jurisdiction?

Even though the BoT's releases to the public on the economic and monetary conditions for December and the fourth quarter of 2020 indicated that the Thai economy continued to recover, the recovery remained uneven. However a new COVID-19 outbreak emerged in January 2021 which affected some economic activities and consumer confidence is still uncertain.

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