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Notification of the Bank of Thailand

No. SorNorSor. 36/2551

Re: Guidelines on Conducting Transactions with Major Shareholders or Businesses with Beneficial Interest (Related Lending)

1. Objective of the Notification

In the past, financial institutions invested in variety of businesses either by the financial institutions themselves or by joint investment with the financial institutions' directors, senior management, and related parties of these persons. Some financial institutions granted large amount of credits to these businesses, shareholders and senior management without proper credit underwriting process or offering special favors to these businesses, thereby making losses to the financial institutions. Hence, since 2001, the Bank of Thailand has prescribed guidelines on granting credits to or investment in businesses with beneficial interest and granting credits to shareholders of financial institutions by setting a limit and supervisory guidance for commercial banks, finance companies, and credit foncier companies. Previously, there were some differences between guidelines for commercial banks and finance companies due to differences in business scope. This Notification aims to compile the related Notifications of the Bank of Thailand into one Notification, without making any substantial change from the previous guidelines and in line with the following three main objectives:

Objective 1 The Bank of Thailand has prescribed the guidelines on consolidated supervision after the Financial Institutions Business Act B.E. 2551 is in effect. In this respect, a financial business group authorized by the Bank of Thailand, which was previously supervised under related lending notification, will be conducted separately under the guidelines on consolidated supervision, whereby supervision of transactions with major shareholders or businesses with beneficial interest outside the financial group will be conducted under this Notification.

Objective 2 To conduct the prudential supervision that can incorporate risks of transactions undertaken by financial institutions with their major shareholders or businesses with beneficial interest, the supervisory scope is extended to include all types of transactions in the calculation of the limit. In addition, the capital base is expanded to total capital fund, in line with the revised guidelines on large exposure.

Objective 3 To conduct the prudential supervision for all types of financial institutions to be of the same standard in accordance with the intention of the Financial Institutions Business Act B.E. 2551 since previously there were some differences in the supervisory guidelines on related parties transactions for commercial banks, finance companies, and credit fancier companies.

2. Statutory Power

By virtue of Section 49 of the Financial Institutions Business Act B.E. 2551, the Bank of Thailand hereby issues the guidelines on conducting transactions with major shareholders or businesses with beneficial interest (Related Lending)

3. Scope of Application

This Notification shall apply to all financial institutions in accordance with the laws governing financial institutions business.

4. Notifications and Circular Letters that were Revoked

Notifications and Circular Letters that were revoked are listed in Attachment 1

5. Contents

5.1.1 Definitions of the following words shall be in accordance with Section 4 of the Financial Institutions Business Act B.E. 2551 as listed in Attachment 2:

- (1) Financial Business
- (2) Granting Credits
- (3) Credit-like Transactions
- (4) Financial Institution
- (5) Company

- (6) Parent Company
- (7) Subsidiary Company
- (8) Associated Company
- (9) Persons with Managing Authority
- (10) Related Party
- (11) Major Shareholder
- (12) Businesses with Beneficial Interest

5.1.2 “Capital Funds” means total capital funds in accordance with the Notifications of the Bank of Thailand on capital composition and maintenance of capital funds by locally incorporated commercial banks, branches of foreign banks, finance companies or credit foncier companies, as the case may be.

5.2 Guidelines

5.2.1 The ratio of transactions conducted with major shareholders or businesses with beneficial interest

Financial institutions are prohibited from granting credits, investment, undertaking contingent liabilities or credit-like transactions with major shareholders or businesses with beneficial interest in excess of 5 percent of total capitals of financial institutions or 25 percent of total liabilities of such shareholders or businesses with beneficial interest, whichever amount is lower. Granting credits, investment, undertaking contingent liabilities or credit-like transactions with related person of major shareholders shall also be accounted as conducting such transactions with major shareholders.

5.2.2 Exemption from calculation the limit

Transactions with major shareholders or business with beneficial interest of the following cases shall be exempted from calculating ratio under 5.2.1.

(1) granting credits, investment, undertaking contingent liabilities or credit-like transactions in any governmental authority or the Financial Institutions Development Fund;

(2) granting credits, investment, undertaking contingent liabilities or credit-like transactions in any company that a governmental authority, or the Financial

Institutions Development Fund hold shares in excess of 10 percent of total shares sold, or in any juristic person over which a governmental authority has the power of control directly or indirectly.

(3) granting credits, investment, undertaking contingent liabilities or credit-like transactions in mutual fund established by the governmental authority

(4) granting credits, investment, undertaking contingent liabilities or credit-like transactions with full collateral in form of cash, deposits at that financial institution, bills of exchange issued by that financial institution, Thai Government securities that are without any obligation and negotiable, or securities issued by the Financial Institutions Development Fund. The securities shall be valued at the registered value of such securities or instruments.

(5) granting credits, investment, undertaking contingent liabilities or credit-like transactions with beneficial interest that result from debt restructuring, where financial institutions, major shareholders, or any business with beneficial interest did not have any beneficial interest prior to the debt restructuring.

As for debtor restructuring of the business in which financial institutions, major shareholders, or any business with beneficial interest have beneficial interest prior to the debt restructuring, or the subsequent debt restructuring in which the financial institutions, major shareholders, or any business with beneficial interest have beneficial interest as a result of debt restructuring, if these cases require financial institutions to grant additional credits, invest, undertake contingent liabilities or credit-like transactions in excess of the prescribed ratio under 5.2.1, a prior consent from the Bank of Thailand must be obtained.

(6) Undertaking contingent liabilities under derivatives contracts with parent company, other subsidiaries with same parent company, or affiliated company located overseas of that financial institution for the purpose of risk management on derivatives transactions undertaking with other persons.

5.2.3 The calculation of contingent liabilities under 5.2.1 shall refer to the calculation under the Notification of the Bank of Thailand : guidelines on large exposure.

5.2.4 Transaction with major shareholders or business with beneficial interest shall not have special conditions or stipulations deviated from the norm as follows:

(1) Without taking into account to consider the status and operating performance of the business or feasibility analysis of the project

(2) Offering any special favor to the business , e.g. charging lower interest rate than the rate normally charged on customers with similar risk profile, no mortgage registered on immovable property placed as collateral, no legal enforcement made on the collateral, etc.

(3) There is reasonable doubt that the business is truly conducted.

5.2.5 Financial institutions shall prepare a policy on conducting transactions with major shareholders or business with beneficial interest, wherein the following rules must be included at the minimum:

(1) The transactions must be conducted in accordance with the guidelines of the Bank of Thailand Policy Statement on credit transactions.

(2) Transaction with major shareholders or business with beneficial interest aforementioned must be approved by the board of the financial institutions with a unanimous resolution, except the following cases where the board can grant the approval authority to credit committee or management committee. However, such cases must be in accordance with the credit approval policy set by the financial institutions and the amount of money transacted with major shareholders or business with beneficial interest must be ratified and receive an unanimous resolution by the board in a subsequent meeting.

(2.1) Granting credits, investment, undertaking contingent liabilities or credit-like transactions with governmental authority, the Financial Institutions Development Fund or company that governmental authority or the Financial Institutions Development Fund has the power of control or holds shares in excess of 10 percent of total shares sold of that company or

(2.2) Granting credits, investment, undertaking contingent liabilities or credit-like transactions with existing customers prior approved by the board, in case of requesting additional credits or new credits.

Financial institutions shall immediately cease granting credits, investment, undertaking contingent liabilities or credit-like transactions if the board does not give ratification or the ratification does not receive an unanimous resolution.

(3) Directors or any person with managing authority having beneficial interest on granting credits, investment, undertaking contingent liabilities or credit-like

transactions are prohibited to participate in the approved process for such credits, investment, undertaking contingent liabilities or credit-like transactions.

5.2.6 The supervisory guidelines under this notification do not apply for the transactions conducting with major shareholders or business with beneficial interest of companies in the financial business group that was authorized by the Bank of Thailand on its establishment. In any case, such financial business group shall be conducted under guidelines of the Bank of Thailand on consolidated supervision.

5.2.7 Where it appears an evidence of a breach from Section 49 ; nevertheless a financial institution can prove that it has already exercised its best efforts in assessing related parties but fails to detect or prevent such actions. , it can be deemed that the financial institution does not perform the breach under Section 49.

6. Transitional Provision

Granting credits to, investment in, undertaking contingent liabilities or credit-like transactions with major shareholders and related persons or with business with beneficial interest in excess of the prescribed ratio under 5.2.1 prior to the effective date of the Financial Institutions Business Act B.E. 2551, where such credits, investment, contingent liabilities, or credit-like transactions did not violate the laws on commercial banks, finance companies, finance and securities companies, and credit foncier companies that were effective then, financial institutions shall not undertake additional credits, investments, contingent liabilities or credit-like transactions with major shareholders or related persons and business with beneficial interest. The financial institutions must proceed to have these credits, investments, contingent liabilities, or credit-like transactions to be in line with law stipulated under Section 49 without any delay, or within 5 years from the effective date of the Financial Institutions Business Act B.E. 2551.

7. Effective Date

This Notification shall be effective the day after its publication in the Government Gazette onward.

Announce on 3 August 2008.

(Mrs. Tarisa Watanagase)

Governor

Bank of Thailand

Notifications of the Bank of Thailand and Circulated Letter that are Revoked

No.	Date of the BOT Notification / Circulated Letter	Type	Number	Topic
1	1 September 1980	Circulated letter	ThorPorThor. NorWor. (Wor) 1157/2523	Granting credits to, acceptance or guarantee of business related to commercial bank's director, management, and shareholder
2	28 April 1981	Circulated Letter	ThorPorThor. NgorPhor. 495/2524	Granting credits or giving aval to bills for business related to commercial bank's director, management, and shareholder
3	28 April 1981	Circulated Letter	ThorPorThor. NgorPhor. 496/2524	Granting credits or giving aval to bills for business related to commercial bank's director, management, and shareholder
4	8 September 1987	Notification		Undertaking certain contingent liabilities by commercial banks (Circulated letter No.NorWor. (Wor) 805/2530 dated 8 September 1987)
5	28 May 2004	Notification		Granting credits to, or investment in business with beneficial interest and granting of credits to shareholders of finance companies, finance and securities companies, and credit foncier companies (Circulated letter No.SorNorSor. (21) Wor.81/2547 dated 9 June 2004)
6	25 July 2005	Notification		Granting credits to, or investment in business with beneficial interest and granting of credits to shareholders of commercial banks (Circulated letter No.PhorSorWor.(21) Wor.71/2548 dated 8 August 2005)
7	12 October 2006	Circulated Letter	ThorPorThor. PhorNorSor. (21) Wor. 1460/2549	Relaxation of granting credits to, or investment in business with beneficial interest and granting of credits to shareholders of commercial banks that are approved by the board with unanimous resolution

Definition

(1) “Financial business” means commercial banking business, finance business, credit foncier business, securities business, futures contract business under the laws on futures contracts, life insurance business under the laws on life insurance or other businesses as prescribed by the Bank of Thailand

(2) “Granting credits” means lending money, buying, discounting or rediscounting bills, becoming a creditor upon having paid or ordered an amount of money to be paid on behalf of a customer, or becoming a creditor upon having paid in accordance with an obligation specified in a letter of credit or other contingent liabilities

(3) “Credit-like transactions” means factoring, hire purchase, leasing and other transactions similar to granting credits as specified by the Bank of Thailand

(4) “Financial institution” means

(4.1) commercial bank

(4.2) finance company

(4.3) credit foncier company

(5) “Company” means limited company, public limited company, limited partnership, ordinary partnership or other juristic persons

(6) “Parent company” means a company having the power of control over other companies either directly or indirectly in the following manners:

(6.1) Holding more than 50 percent of total shares sold

(6.2) Having the power to control majority voting rights in the shareholders’ meeting

(6.3) Having the power to control the appointment or dismissal of a person with managing authority or directors at least half of the total number of directors in the company or

(6.4) Having the power of control in the manner prescribed by the Bank of Thailand.

Holding of 20 percent or more of total shares sold in a company, directly or indirectly, is assumed to have the power of control, unless it can be proven otherwise.

(7) “Subsidiary company” means

(7.1) Company that has other company as parent company or

(7.2) Subsidiary companies of company under (7.1) at all levels

(8) “Affiliated company” means subsidiary companies that have the same parent company

(9) “Person with managing authority” means

(9.1) Manager, deputy manager, assistant manager, managing director of the financial institution or company, as the case may be, or a person with equivalent position

(9.2) A person that the financial institution or the company has engaged to have managing authority in whole or in part, or

(9.3) A person who, in practice, has the power of control or dominate the manager or director or management of the financial institution or the company in terms of policy formulation or business operation of the financial institution or the company

(10) “Related person” means a person who is related to another person in the following manners:

(10.1) Spouse

(10.2) Child or adopted child who is not yet reached adulthood

(10.3) Company in which that person or person under (10.1) or (10.2) has managing authority

(10.4) Company in which that person or person under (10.1) or (10.2) has power to control the majority voting rights in the shareholders’ meeting

(10.5) Company in which that person or person under (10.1) or (10.2) has the power to control the appointment or dismissal of directors

(10.6) Subsidiary company of the company under (10.3), (10.4) or (10.5)

(10.7) Affiliated company of the company under (10.3), (10.4) or (10.5)

(10.8) Principal or agent or

(10.9) Other persons with characteristics as specified by the Bank of Thailand

In case where a person holds, directly or indirectly, 20 percent or more of total shares sold in a company, it is assumed that such company is related to such person, unless it can be proven otherwise.

(11) “Major shareholder” means a person holding or having shares of the financial institution, inclusive of shares held by related person, in excess of 5 percent of total shares sold

(12) “Business with beneficial interest” means a company that the financial institution, any of the financial institution’s directors, a person with managing authority of the financial institution or any related persons to such persons hold shares, in aggregate, in excess of 10 percent of total shares sold of such company

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