

Unofficial Translation
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Notification of the Bank of Thailand

No. SorNorSor. 01/2552

Re: Executing the Personal Guarantee Contract

1. Rationale

As many financial institutions have set out the rules on personal guarantee to have the guarantors be responsible for debtors' future debt in an unlimited amount, the Bank of Thailand and the Thai Banker's Association has later mutually agreed that this practice deprive the guarantors' right of managing his/her own risk, and it is therefore deemed appropriate to review such practice. As a consequence, the Bank of Thailand and the Thai Banker's Association encouraged the enacting of Section 39(3) of the Financial Institutions Businesses Act B.E. 2551. In addition, in order to promote fairness for the guarantor, the National Legislative Assembly has issued additional law requiring the Bank of Thailand to set out a regulation requiring the financial institutions to notify the guarantors if the financial institutions are unable to settle with the default debtors within 6 months. This is to allow guarantors to have an opportunity to repay debt on behalf of principal debtor in case the guarantors are concerned that the interest may increase as time goes by, resulting in greater liability in the future.

The notification is amended to exempt the enforcement of above mentioned rules in the case of parent companies' executing personal guarantee contracts with financial institutions which are creditors to guarantee their subsidiaries. Since the parent companies have the power of control over their subsidiaries, in practice, it is therefore within the parent company's discretion to decide whether the subsidiaries should incur debt in excess of their existing ceiling. For the same reason, in case where the financial institutions are unable to settle with the default debtors, financial institutions shall not be required to notify the guarantor within the abovementioned period.

2. Statutory Authority

By virtue of Sections 39(3) of the Financial Institutions Businesses Act B.E. 2551, the Bank of Thailand has stipulated rules with which financial institutions shall comply regarding executing the personal guarantee contract.

3. Scope of Application

This Notification shall apply to all financial institutions under the law governing financial institutions businesses.

4. Notifications and Circulars Letters that were Revoked

The notification of the Bank of Thailand No. SorNorSor. 78/2551 Re: Executing the Personal Guarantee Contract dated 3 August 2008 shall be revoked.

5. Contents

5.1 In this notification,

Definition of “parent company” shall be in accordance with Section 4 of the Financial Institutions Businesses Act B.E. 2551 as follows:

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

- (1) Holding more than 50 percent of total shares sold**
- (2) Having the power to control majority voting rights in the shareholders’ meeting**
- (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**
- (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.

5.2 Principles

5.2.1 In executing personal guarantee contracts, financial institutions shall comply with following rules:

- (1) The principal amount must be clearly defined in the contracts. In addition, executing unlimited personal guarantee contracts is prohibited.
- (2) In case where the contracts have a defined payment schedule, if financial institutions are unable to settle with the default debtors within 6 months from the default date, financial institutions must notify guarantors of such details in writing.

5.2.2 Provision under 5.2.1 shall not apply to the case where parent companies execute personal guarantee contracts with financial institutions which are creditors to guarantee their subsidiaries. Therefore, such guarantees shall not be required to specify a limit of the principal amount. In addition, in case where the debtors default, financial institutions shall not be required to notify guarantors within the abovementioned period.

6. Effective Date

This Notification is effective from the day after its publication in the Government Gazette.

Announce on 27 January 2009

(Mrs. Tarisa Watanagase)
Governor
Bank of Thailand

Question – Answer Appended to the Notification of the Bank of Thailand
Re: Personal Guarantee

No.	Question	Answer
1. Enforcement		
1.1	The stipulation under Section 39 (3) regarding personal guarantee agreement of financial institution is applicable only to personal guarantee by natural persons which exclude guarantee by juristic persons, is it correct?	Section 39 (3) is applicable to natural persons and juristic persons.
1.2	Does this notification apply to guarantee for loans only or does it also apply to types of guarantees?	It shall apply to all types of guarantee agreements arisen from undertaking financial institution businesses such as loan guarantee, guarantee of contingent liability, etc. However, it shall exclude other types of guarantees not arisen from undertaking financial institution businesses.
2. Specifying principal limit in the agreement		
2.1	Does the requirement that personal guarantee must specify the principal limit in the guarantee agreement affect agreements executed prior to the effective date of the Financial Institutions Businesses Act B.E. 2551?	It shall only be applicable to agreements executed from the effective date of the Financial Institutions Businesses Act B.E. 2551.
2.2	If the guarantee agreement does not specify the principal limit but make reference to the master agreement which clearly specifies the amount and the guarantor is aware that the guarantee is specifically of such agreement, can it be deemed that the guarantee agreement has fulfilled the requirement regarding specifying principal limit under this notification?	It cannot be deemed as having complied with the BOT notification which requires the principal limit be clearly specified in the guarantee agreement. Although the master agreement may have clearly specified the amount, in general master agreements may be amended or modified without the acknowledgement of the guarantor.
2.3	Does the principal limit have to include interest? If it does not include interest, is the guarantee agreement be deemed as unlimited guarantee?	Section 39 (3) stipulates that the principal limit of the loan must be specified. The intention is to limit the principal amount of guarantee. Not specifying interest in the guarantee agreement does not render the guarantee agreement as being limitless.
3. Notifying the guarantee of the details of defaulted loan		
3.1	Why doesn't the counting of period that the financial institution	The counting shall start when the debt is due because if it is to start upon negotiation of the

	initially grants the debtor but fails to reach an agreement within 6 months, restart when the financial starts to negotiate with the debtor again?	financial institution with the debtor, it will be difficult to be certain as the negotiation date is uncertain. For example, the negotiation could have started after the loan has been defaulted for 1 year. Hence, it would not protect the guarantor from additional interest obligation if it is to start when the financial institution commence negotiation with the debtor.
3.2	Section 39 (3) requires that the guarantor be notified if the financial institution agrees to extend the time for the debtor but fails to reach an agreement within 6 months from the date of default. Does this requirement apply to guarantee agreement of debtor under debt restructuring, debtor in the judicial process, or guarantee who is declared bankrupt?	Financial institutions shall notify the guarantor of the details in all cases.
3.3	Is it correct that the requirement that the guarantor be notified upon the default of the debtor only applies to loan agreements executed debtors and the new format of guarantee agreements executed by guarantors from 4 August 2008 onward?	Banks shall notify the guarantors of every agreement of which payment has past due for longer than 6 months from the date of default.

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