

(Unofficial Translation)*

Notification of Ministry of Finance

Re: Rules, Procedures, and Conditions for Establishing a Commercial Bank

By virtue of the provisions of Section 5 of the Commercial Banking Act B.E. 2505, as amended by the Commercial Banking Act (No. 2) B.E. 2522, the Minister of Finance hereby issues the rules, procedures, and conditions for establishing a commercial bank as follows:

Article 1: The Notification of the Ministry of Finance Re: Application for Restricted Banking License, dated 28 December B.E. 2541, and the amendments in relation thereto, shall continue to be effective only for commercial banks who have been granted with such license in accordance with the aforementioned Notification prior to the effective date of this Notification.

Chapter 1

General Provision

Article 2: In this Notification,

“commercial bank” means a commercial bank as specified under the Law on Commercial Banking, excluding a branch of a foreign bank;

“retail bank” means a commercial bank licensed to undertake the business of commercial banking, under conditions not to conduct business related to foreign exchange unless permitted by the Minister, and derivatives products unless for risk-hedging of its own portfolios. In addition, a retail bank may only provide banking services to retail customers and small and medium-sized enterprises (SMEs) in accordance with the definition prescribed by the Bank of Thailand. The lending limits per customer shall be as follows:

A. Loans to each retail customer must not exceed 0.05 percent of the 1st tier capital funds in the case of unsecured loans, and 1 percent of the 1st tier capital funds in the case of secured loans, and

B. Loans to each SME must not exceed 10 percent of the 1st tier capital funds;

“company” means a finance company, a finance and securities company, or a credit foncier company;

“financial institution” means a commercial bank, a finance company, a finance and securities company, a credit foncier company, a branch of foreign bank licensed to undertake the business of commercial banking and international banking facility;

“net capital funds” mean capital funds, deducted by the provisions for loan losses or loan doubtful of losses, devaluation, impairment, revaluation for doubtful assets that may be worthless or irrecoverable in accordance with the Bank of Thailand’s Notifications regarding worthless or irrecoverable assets and doubtful assets that may be worthless or irrecoverable, as well as examination results of a competent officer or a commercial bank inspector;

“impaired assets” mean assets classified as substandard, doubtful, doubtful of loss, and loss, net book value of shares not registered in Stock Exchange of Thailand, net present value of debt securities obtained through debt restructuring, net book value of foreclosed assets, net book value of foreclosed loans and foreclosed assets already transferred to any affiliated asset management companies, and assets with trends to become impaired according to the examination results of a competent officer or a commercial bank inspector, total of which must be deducted by the provisions for assets classified as doubtful of loss and loss;

“total assets” mean the sum of total assets and provisions, deducted by the provisions for assets classified as doubtful of loss and loss;

“Minister” means the Minister of Finance.

Article 3: A company may apply to establish a commercial bank in accordance with the rules, procedures, and conditions specified in this Notification.

Regarding the application in paragraph 1, a company may opt to apply to establish a retail bank.

Chapter 2

Qualifications of an Applicant Eligible to Apply to Establish a Commercial Bank

Article 4: An applicant eligible to apply to establish a commercial bank must fulfil the following rules and qualifications:

4.1 is a finance company, a finance and securities company, or a credit foncier company that is currently operating on the effective date of this Notification;

4.2 has management quality from the result of the latest evaluation that passes a benchmark set by the Bank of Thailand in the following areas:

A. roles and behaviour of directors and senior managers (heads of department and above),

B. risk management,

C. undertaking of high-risk business,

D. organisational structure and working process,

E. internal control and audit,

F. compliance to important rules and regulations,

G. cooperation with the authorities, and

H. behaviour in conformity with good governance;

4.3 maintain the ratio of net capital funds to risk weighted asset, whose computation is in accordance with the Notifications by the Bank of Thailand regarding the maintenance of capital funds to assets and contingent liabilities ratio for finance companies, and regarding maintenance of capital funds to assets ratio for credit foncier companies, as the case may be, no less than 10 percent as of the last day of the latest month prior to the date of the submission of the application;

4.4 has the ratio of impaired assets to total assets no more than 15 percent as of the last day of the latest month prior to the date of the submission of the application;

4.5 has sufficient provisions for doubtful assets which may be worthless or irrecoverable in accordance with the rules prescribed by the Bank of Thailand, as well as the examination results by a competent officer or a commercial bank inspector; and

4.6 an eligible applicant must have no new core shareholders from the date on which the Minister signs this Notification until the date on which a license to undertake the business of commercial banking is granted, or until the date on which the notice of the rejection of the application is received, as the case may be. This is with an exception of there being new core shareholders resulting from merger or acquisition following the merger-and-acquisition plan approved by the Minister.

Article 5: An applicant eligible to apply to establish a commercial bank that is not a retail bank must have a plan to merge with, acquire or accept the transfers of all or most of the assets and liabilities from at least one finance company and/or credit foncier company in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand.

Chapter 3

Submission of Application to Establish a Commercial Bank

Article 6: A company intending to apply to establish a commercial bank in accordance with this Notification must submit an application and a copy to the Bank of Thailand at 273 Samsen Road, Wat Sam Praya, Pranakorn, Bangkok 10200 during office hours within 6 months from the effective date of this Notification. The Bank of Thailand shall verify the completeness of the submitted documents and complete the preparation of the supporting documents for the review of the applications within 1 month from the application deadline in accordance with this Notification.

Article 7: A company applying to establish a commercial bank must submit an application together with the following documents:

7.1 the details of the applying company, including the equity holding structure, names of directors and senior managers, the structure of business group, and financial statements over the past 2 years,

7.2 a business plan after having been approved to establish a commercial bank, comprising such details as:

(1) projected financial statements of no less than 3 years, the first year of which must show the details of quarterly financial statement,

(2) details of organisational structure, including job descriptions of staff responsible for the management of the commercial bank to be established, as well as the qualifications and experiences of its key personnel. The names of persons to be appointed as chairman of the board of directors, chairman of the executive board and/or chief executive officer, managing director, and deputy managing director and other equivalent positions whatever they may be titled of such commercial bank must also be submitted.

Those who will be in charge of the aforementioned responsibilities must have the following qualifications:

a. is competent in management, with good track record. Such person to hold the position of chief executive officer or chairman of the executive board, working full time, managing director, deputy managing director and other equivalent positions whatever they may be titled of the commercial bank must have had at least 5 years of experience in senior management position with reputable commercial banks or financial institutions,

b. is honest,

c. has no record of misconduct or history of deception, or any conducts indicating lacks of responsibility or prudence, or reflecting unfair or unreliable business practices, or any conducts of or any involvements in business that raise doubts about that person's competence or prudence,

d. is not or has never been bankrupt,

e. has no problem servicing principal or interest with any financial institutions,

f. has never been sentenced to imprisonment by a final court judgment, except for an offence due to negligence or a minor offence,

g. has never been removed from a management position in any financial institutions by the Bank of Thailand or the Office of the Securities and Exchange Commission, and

h. has never been charged with, filed a complaint against, or is not currently involved in a litigation process on grounds of cheating and fraud or dishonesty, in accordance with the Law on Commercial Banking, the Law on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, the Law on Securities and Exchange or the law (s) concerning the supervision of that financial institution, by the Bank of Thailand, the Office of the Securities and Exchange Commission, or other government agencies, both in the country and abroad, that are responsible for supervising financial institutions.

The directors with an authorization to enter into juristic acts on behalf of the applying company must, in addition, provide a signature to certify qualifications of the aforementioned personnel.

(3) details of the board and the board's sub-committees, including qualifications and experiences of the board members. The board of directors of the commercial bank must have at least 3 independent directors or in the proportion of 1 independent director to 4 directors, whichever is higher. Two sub-committees, namely the Audit Committee and the Risk Management Committee, must be established with the structure, qualifications, roles, duties, and responsibilities of the members in accordance with the rules prescribed by the Bank of Thailand,

(4) details of each shareholder regarding the structure of core shareholders, including name (s), background, and shareholding ratio in the commercial bank to be established. In

essence, the major shareholders, who possess 10 percent and above of the total shares sold, must also satisfy the qualifications stated in Article 7.2 (2) b. to h.

(5) a plan to sell its business or return the license and/or the plan to accept the transfers of assets and liabilities from other entities within the same business group, **in the case of the applying company having more than one financial institution within the same business group,**

(6) a branch opening plan, and

(7) a plan for merger, acquisition, or acceptance of the transfer of all or most of the assets and liabilities with at least one finance company and/or credit foncier company, **in case of the company applying for establishing a commercial bank that is not a retail bank.** The applying company must specify the name (s) of the finance company and/or credit foncier company, with which it has entered into the process of merger, acquisition, transfer of assets and liabilities, or joint venture, or is in the process of doing so, including important information about financial position of such finance company (s) and/or credit foncier company (s). Example of the detailed information are the amount of net capital funds, assets, liabilities, and capital, assets valuation method, and impaired assets management and restructuring, etc., as well as the board's resolution (s) of every company approving the merger, acquisition, transfers of assets and liabilities, or joint venture.

7.3 a work plan to facilitate the undertaking of commercial banking business, with evidences to ensure full compliance with the following conditions:

(1) having the risk management system that can indicate, measure, monitor, and control the level of overall company risk, including credit risk, market risk, liquidity risk, strategic risk, and operational risk, including legal risk and reputational risk,

(2) having a clear policy on lending to business group (s) or businesses that are related to the commercial bank to be established, including the information system to monitor the outstanding loans and contingent liabilities to the aforementioned business group (s). Should the policy differ from the lending policy to general customers, reason (s) must be provided,

(3) having a concrete internal control system in the aspect of segregation of duties and responsibilities, approval of credit lines, investment budget or various other expenses,

(4) having assets valuation system that covers customers' interest payment and principal repayment, collateral valuation, and loan loss provisioning according to the Notification of the Bank of Thailand, and

(5) having personnel with knowledge and expertise in the business operation of banking and finance, and appropriate personnel allocation. Due consideration must be given to the knowledge and specific areas of expertise of each person, the duties and responsibilities of the staff in each business unit, and the business plan.

Chapter 4

Commercial Banking License Review Process

Article 8: A committee to review application to establish a commercial bank in accordance with the Financial Sector Master Plan to be appointed by the Minister (the Committee) shall review the application (s) to establish a commercial bank according to the rules, procedures, and conditions specified in this Notification and select the qualified applicant (s) for the Minister's consideration. The Committee is empowered to settle and its opinion considered final for any problems concerning the rules, procedures, and conditions, and to request any evidence and document from the applicant (s) who submits an application to establish a commercial bank in addition to the documents specified in this Notification, for the purpose of the review.

Article 9: After the Committee reviews the application (s) to establish a commercial bank, the Committee shall submit the list of the qualified applicant (s) to establish a commercial bank for the Minister's approval within 3 months from the date on which the application (s) and all the required documents have been completely received. The Minister shall reach a final decision within 2 months from the date on which the Committee's recommendation has been received. In granting an approval, the Minister may prescribe any other conditions.

Article 10: After the Minister has given an approval to a company to establish a commercial bank, such company shall take on a process of the following:

10.1 in the case of having more than one financial institution in the same business group, such company must complete the process of merger and/or acquisition, business sell-off, or returning the license and/or accepting the transfers of all or most of assets and liabilities from other financial institutions under the same business group, as the case may be, within one year from the date of the Minister's approval.

10.2 in the case of applying to establish a commercial bank that is not a retail bank, such company shall proceed with the process of merger or acquisition or acceptance of the transfers of all or most of assets and liabilities from at least one finance company and/or credit foncier

company, in accordance with the plan approved. The finance company and/or credit foncier company, to be merged or acquired or whose assets and liabilities are to be transferred, must return their licenses within one year from the date of the Minister's approval, unless it has proved to be under circumstance that warrants a waiver. In this respect, the Bank of Thailand may grant a waiver but not exceeding 6 months from the date originally set as the deadline for the completion of the whole process.

10.3 a company must submit the name (s) of the chairman of the board of directors, chairman of the executive board, managing directors, members of the board of directors, and senior executives of the commercial bank to be established for approval by the Bank of Thailand prior to the opening date.

10.4 **in the case that the approved company is a finance and securities company**, such company must separate the securities business from finance business and operate the former in a securities company within one year from the date of the Minister's approval.

Article 11: Once the process mentioned in Article 10 as well as additional conditions set by the Minister are completed, the approved company shall request for a license from the Minister, whereby the following conditions must be complied:

11.1 it shall begin its operation within one year from the approval date, unless a waiver has been granted by the Bank of Thailand. In granting a waiver, the Bank of Thailand may specify any additional conditions;

11.2 it shall return the license granted to undertake finance or credit foncier business, as the case may be, to the Ministry of Finance on the day which the commercial bank begins its operation, and maintains only one presence of the licensed commercial bank;

11.3 on the day a commercial bank begins its operation, a commercial bank must have the 1st tier capital funds in the amount no less than the following:

11.3.1 no less than 5 billion baht, in the case of a commercial bank that is not a retail bank, and

11.3.2 no less than 250 million baht, in the case of a retail bank;

11.4 the appointments and changes of any members or chairman of the board, chief executive officer, managing director, deputy managing director and other equivalent positions whatever they may be titled, must be approved by the Bank of Thailand;

11.5 the changes of the structure of shareholders that hold more than 5 percent of a commercial bank's total shares sold must be approved by the Bank of Thailand, or comply with the law (s) concerning the supervision of commercial banks.

The computed number of shares in paragraph 1 must include the number of shares held or under the possession of the related parties in accordance with the rules, procedures, and conditions to be prescribed by the Bank of Thailand;

11.6 the maintenance of the capital funds of a retail bank to bear the risks from granting loans to SMEs and retail customers must comply with the rules concerning the maintenance of the capital funds to be prescribed by the Bank of Thailand;

11.7 a retail bank who has operated for at least 3 years and wishes to apply for an upgrade so as to provide the same scope of banking business as that of a commercial bank may submit an application to the Bank of Thailand, where the rules specified in Chapter 2 and Chapter 3 will be enforced *mutatis mutandis*. In addition, the 1st tier capital funds of such bank must satisfy the amount to be prescribed by the Bank of Thailand, which will be no less than the requirement stated in Article 11.3.1 in this Notification. The application will be considered on the basis of economic condition at the time of submission *mutatis mutandis*, which will subsequently be submitted to the Minister for further consideration.

Article 12: This Notification shall come into force on and from 1 February B.E. 2547.

Given on 23 January B.E. 2547

Minister of Finance

* This translation is for convenience of those who are not familiar with the Thai language. For official reference, only the Thai texts are relevant.