

Act on the undertaking of finance business,
securities business and credit foncier business,

B.E. 2522**

BHUMIBOL ADULYADEJ, REX.,

Given on the 8th day of May B.E. 2522;

Being the 34th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to enact a law on the undertaking of finance business,
securities business and credit foncier business;

Be it, therefore, enacted by His Majesty the King, by and with the advice and
consent of the National Legislative Assembly functioning as both Houses of Parliament, as
follows:

Section 1. This Act shall be called the “Act on the Undertaking of Finance
Business, Securities Business and Credit Foncier Business, B.E. 2522.”

Section 2. This Act shall come into force on and from the day following the date
of its publication in the Government Gazette

Section 3. All other laws, rules, regulations and notifications in so far as dealing
with matters governed by this Act or being inconsistent with its provisions shall be replaced
by this Act.

Section 4. In this Act,

“Finance business” means the business of procuring funds and using such funds
for any kind of business operation, which may be categorized as follows:

- (1) Business of finance for commerce;
- (2) Business of finance for development;
- (3) Business of finance for disposition and consumption;
- (4) Business of finance for housing;
- (5) Other types of finance business as prescribed in ministerial regulation.

“Business of finance for commerce” means the business of procuring funds from the public and lending them for short-term periods including acting as acceptors, givers of aval, or interveners for honor of bills which is done in the ordinary course of business.

“Business of finance for development” means the business of procuring funds from the public and lending them for medium and long-term periods to industrial, agricultural or commercial undertaking which is done in the ordinary course of business.

“Business of finance for disposition and consumption” means the business of procuring funds from the public and engaging in the following activities in the ordinary course of business:

(1) the lending of money to finance disposition of goods, the payments for which are to be made on the installment or hire-purchase basis;

(2) the lending of money to the public to finance purchase of goods from any business which is not of its own;

(3) the letting under hire-purchase agreement to the public of goods for which the ownership has been transferred from a business which sells or distributes such goods after agreements have been made for the hire-purchases of the same, or the letting under hire-purchase agreement to the public of goods which have been repossessed from other hire-purchasers;

(4) the acceptance for value of transfers of claims arising from dispositions of goods.

“Business of finance for housing” means the business of procuring funds from the public and engaging in the following activities in the ordinary course of business:

(1) the lending of money to the public to finance acquisition of ownership of land and/or dwelling houses;

(2) the lending of money to finance acquisition of lands and/or dwelling houses for the purpose of selling or disposing of the same on hire-purchase to the public; or

(3) the acquisition of lands and/or dwelling houses for the purpose of selling and disposing of the same on hire-purchase to the public.

“Procuring funds from the public” includes borrowing money or accepting

deposits of money from the public.

“Certificate of deposit”² means a negotiable instrument issued by a finance company to a depositor as evidence of accepting deposits of money and as representation of the right of the holder of such negotiable instrument to have the money repaid at the end of a fixed period, with or without interest specified therein.

“Lending of money” in respect only of the finance business, includes the purchasing discounting or re-discounting of bills, other negotiable instruments of credit instruments.

“Lending of money for short-term periods” means the lending of money repayable on demand or at the end of a fixed period not exceeding one year from the date of lending.

“Lending of money for medium-term periods” means the lending of money repayable at the end of a fixed period which exceeds one year but does not exceed five years from the date of lending.

“Lending of money for long-term periods” means the lending of money repayable at the end of a fixed period which exceeds five years from the date of lending.

“Capital funds” means

(1) the paid-up capital, including share premium received by a company and money received by such company as result of issuance of certificates representing the rights to buy shares of such company;

(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 Articles of Association of such company, excluding reserves for the diminution in value of assets and reserves for repayment of debts;

(4) net profit after appropriation;

(5) reserve arising from assets revaluation, other reserves; and

(6) money which a company receives by issuing a long term debt instrument with a term to maturity of over five years and with right ranked after ordinary creditor.

For the capital funds under (1), (2), (3) and (4), losses incurred in all previous accounting periods shall be deducted first and the goodwill shall be deducted in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand.

The type, category and calculation of the capital funds under (5) or (6) shall be in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand.

For the capital funds under (1), (2), (3), (4), (5) and (6), the amount of money in the instrument under (6) of a commercial bank and any other companies which such company holds and any assets shall be deducted in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand.

“Securities business”

“Business of brokerage for buying and selling of securities”

“Business of trading in securities”

“Business of providing investment advice”

“Business of managing sale of securities”

“Business of investment management”

“Securities” means:

(1) Treasury bills;

(2) Bonds;

(3) Shares, debentures, certificates representing the rights to shares or debentures, certificates representing the rights to buy shares or debentures, or certificates evidencing the subscriptions for shares or debentures;

(4) Certificates representing the rights to dividends or interests from securities;

(5) Instruments or evidences representing the rights to the property of investment plans issued by a person who engages in the business of investment management, whether locally or abroad;

(6) Other instruments as prescribed in ministerial regulations.

“Credit foncier business” means the credit foncier business of the following types”

- (1) Business of credit foncier;
- (2) Business of buying under contract of sale with a right of redemption;
- (3) Other types of business concerning immovable property as prescribed in ministerial regulations.

“Business of credit foncier” means the business of lending money on the security of mortgage of immovable property in the ordinary course of business.

“Business of buying under contract of sale with a right of redemption” means the business of buying immovable property under contract of sale with a right of redemption in the ordinary course of business.

“Limited company” means a limited company under the provisions of the Civil and Commercial Code or a limited public company under the law on limited public companies.

“Company” means a finance company or a credit foncier company.

“Finance company” means a limited company which has obtained a license to engage in the finance business.

“Securities Company”

“Credit foncier company” means a limited company which has obtained a license to engage in the credit foncier business.

“Branch office” includes any office which is separate from the head office of a company and engages in any activity for the benefit of the company.

“License” means a license to engage in the finance business, or the credit foncier business.

“Manager” shall include Deputy Manager, Assistant Manager, Assistant Manager and any person holding an equivalent position which is called otherwise.

“Financial Institution”. means financial institutions under the law on the interest on lending of financial institutions.

“The Minister” means the Minister in charge of the enforcement of this Act.

Section 5. This Act shall not apply to financial institutions or juristic persons established under the provisions of a specific law.

Section 6. The Minister may delegate to the Bank of Thailand the authority to appoint officials of the Bank of Thailand as competent officers to act in accordance with this Act.

The appointment of competent officers under the first paragraph shall be published in the Government Gazette.

Section 6 bis. There shall be a committee consisting of the Permanent Secretary for Finance as chairman, the Deputy Governor of the Bank of Thailand as deputy chairmen, not more than five qualified persons appointed by the Cabinet as members of the committee, the Director of the Fiscal Policy Office as a member of the committee and secretary, and the Director of the Financial Institutions Supervision and Examination Department of the Bank of Thailand as a member of the committee and assistant secretary.

The committee under the first paragraph shall have the duty to give advice to the Bank of Thailand relating to the issuance of regulations and the undertaking of any measure which are within the power of the Bank of Thailand as provided in this Act.

Section 7. The Minister of Finance shall be in charge of the enforcement of this act and shall have power to:

- (1) appoint competent officers;
- (2) issue ministerial regulations setting fees not exceeding the rates shown in the list appended to this Act;
- (3) issue ministerial regulations prescribing any other business to be a finance business or a credit foncier business;
- (4) issue ministerial regulations prescribing rules, procedures or form of identification cards for competent officers;
- (5) issue notifications under the provisions of this Act.

Such powers shall be exercised for the purpose of enforcement of the provisions of this Act.

Ministerial regulations under (3) shall also state the definition of the business so prescribed and may also prescribe rules and conditions for the undertaking of such business.

Ministerial regulations and notifications shall take effect after their publication in the Government Gazette.

CHAPTER 1

Formation of a Company and Application for a License

Section 8. The finance business or the credit foncier business may be undertaken only by a limited public company formed under the law on limited public companies and after a license from the Minister has been obtained.

A formation of a limited public company or a limited company under the first and the second paragraph may be effected only after approval of the Minister. Such approval may be granted with such conditions as the Minister may prescribe.

An amalgamation of companies shall be deemed to be a formation of a limited company.

The application for and the granting of a license shall be in accordance with the rules and procedures and subject to the payment of fees as prescribed in ministerial regulations.

Section 9. A license under Section 8 may be granted with such conditions as the Minister may prescribe.

The Minister, after approval of the Cabinet, may amend, change or make any addition to the conditions prescribed under the first paragraph when he deems it necessary for the safety or welfare of the public, and may prescribe that the conditions as amended take effect after the expiration of any specified period of time.

Section 10. A company may have a branch office only after authorized by the Minister.

The application for and the granting of such authorization shall be in accordance with the rules and procedures prescribed by the Minister.

Such authorization may be granted with any condition as the Minister may prescribe.

Section 10. bis. Any person wishing to act on behalf of a company established under foreign laws by setting up a representative office in the Kingdom must obtain the

authorization of the Bank of Thailand. Such authorization may be granted with any condition.

The provisions of Section 13 and Section 52 shall not apply to the person authorized under the first paragraph.

Chapter II

Finance Companies

Section 11. No person other than a finance company shall engage in the finance business.

Section 12. A finance company shall use a name which includes the words “finance company” at the beginning and the word “limited” at the end.

Section 13. No person other than a finance company shall, in the conduct of its business, make use of the name or the description of “financing”, “investment”, “credit”, “trust”, “finance” or any other word or words having the same meaning except commercial banks or representative offices of foreign banks under the law on commercial banking.

Section 14. A finance company shall have a registered capital and a paid-up capital in such amounts as prescribed by the Minister, each of which amounts shall not be less than sixty million bath.

No person shall hold more than ten per cent of the total amount of a finance company’s shares sold except in the case where shareholders are government agencies, state enterprises under the law on the Bank of Thailand, or juristic persons established under the provision of a specific law. In the even that it is necessary to rectify the condition or operation of a finance company, the Bank of Thailand with the approval of the Minister shall have power to permit the holding of shares as otherwise, Such permission may be granted with any condition.

Shares of a finance company held by the following persons or partnerships shall be regarded as shares held by the person under the second paragraph:

- (1) the spouse of the person under the second paragraph;
- (2) a minor child of the person under the second paragraph;
- (3) an ordinary partnership in which the person under the second paragraph or a person under (1) or (2) is a partner;

(4) a limited partnership in which the person under the second paragraph or a person under (1) or (2) is a partner with unlimited liability or in which one or more of such persons is a partner or are partners with limited liability in an aggregate amount exceeding thirty percent of the total capital of such limited partnership;

(5) a limited company in which the person under the second paragraph or a person under (1) or (2) or a partnership under (3) or (4) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold; or

(6) a limited company in which the person under the second paragraph or a person under (1) or (2) or a partnership under (3) or (4) or a limited company under (5) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold.

Section 15. No finance company shall dispose of its shares to a person if such disposition will cause any person to hold shares in a percentage greater than that prescribed under Section 14.

Section 16. Ordinary shares and preference shares of a finance company shall be of the kind with name certificates, having a par value of not more than one hundred bath per share. The Articles of Association of a finance company shall not have any restriction regarding transfer of shares, except for the purpose of compliance with this Act or with the law on limited public companies.

Section 17. The amount of shares of a finance company held by persons of Thai nationality shall not be less than three-fourths of the total amount of shares sold and the number of its directors who are persons of Thai nationality shall not be less than three-fourths of the total number of directors. In the event that it is necessary to rectify the condition or operation of a finance company, the Minister with the recommendation of the Bank of Thailand shall have power to permit the number of shareholders or directors otherwise. Such permission may be granted with any condition.

Section 18. Where it appears that an acquisition of shares of a finance company causes any person to hold shares in a percentage greater than that prescribed in Section 14,

that person may not hold the shares in excess of the prescribed percentage against the finance company and the finance company shall not pay dividend or any pecuniary benefit on the excess shares to such person, or allow such person to exercise voting rights on the said shares at shareholders meetings.

Section 19. For the purpose of compliance with the second and the third paragraphs of Section 14, Section 17 and Section 18, a finance company shall examine its register of shareholders prior to a shareholders meeting and prior to each distribution of dividend or any pecuniary benefit, and shall inform the Bank of Thailand of the result of such examination in the particulars and within the period of time prescribed by the Bank of Thailand. In the case where any shareholder is found to hold shares in excess of the percentage prescribed in Section 14, the finance company shall so notify such person so that he may take steps to dispose of the excess shares.

Section 20. No finance company shall:

(1) reduce or increase its capital without an authorization of the Minister, such authorization may be granted with any condition as the Minister may prescribe;

(2) purchase or hold immovable properties except:

(a) those for use as premises for the business of the finance company or as places of residence or welfare facility for its officers and employees as permitted by the Bank of Thailand;

(b) those acquired by a finance company as a result of a debt settlement, a guarantee in respect of credit granted or the purchase of an immovable property mortgaged to the finance company at auction conducted pursuant to an order of a court or an official receiver, but such immovable properties shall be disposed of within three years from the date of passing of ownership of such immovable properties to the finance company or within a longer period of times as permitted by the Bank of Thailand; or

(c) those held by a finance company which undertakes the business of finance for housing for the purpose of carrying on its business in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand with the approval of the Minister.

The permission under (a) or (b) may be granted with any condition as the Bank of Thailand may prescribe;

(3) accept its own shares as security or accept a finance company's shares from any other finance company as security;

(4) purchase or hold shares of any limited company in an amount exceeding ten per cent of the total amount of such company's shares sold unless approved by the Bank of Thailand.

Such approval may be granted with any condition as the Bank of Thailand may prescribe;

(5) purchase or hold shares in any other finance company except:

(a) those acquired as a result of a debt settlement or a guarantee in respect of a loan granted but such shares shall be disposed of within six months from the date of acquisition;

(b) those acquired as a result of the carrying on of other business activities as authorized by the Minister; or

(c) those acquired as permitted by the Minister with the recommendation of the Bank of Thailand. Such permission may be granted with any condition.

(6) engage in any business other than the type of finance business authorized, except with authorization of the Minister, such authorization may be granted, with any condition.

A finance company which has been granted a license to engage in to finance business for development shall also be allowed to engage in the following activities:

(a) acting as a broker or an agent in the procuring of loans or investment funds, for industrial, agricultural or commercial undertaking, or arranging and managing of matters concerning the lending of money to or the investing of money in the said undertakings;

(b) providing the service of preparing or analyzing investment projects;

(c) acting as a consultant on the matters of finance or operations of industrial,

agricultural or commercial undertakings;

(d) acting as a consultant on the purchase of business or the merger of businesses;

A finance company which has been granted a license to engage in the finance business for commerce shall also be allowed to engage in the business of giving guarantees in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand;

(7) lend money to any of its directors.

The following actions shall also be considered as lending money to such a director:

(a) lending money to the spouse or a minor child of the director;

(b) lending money to an ordinary partnership in which the director or person under (a) is a partner;

(c) lending money to a limited partnership in which the director or person under (a) is a partner with unlimited liability or in which one or more of such persons is a partner or are partners with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;

(d) lending money to a limited company in which the director or a person under (a) or partnership under (b) or (c) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold;

(e) lending money to a limited company in which the director or person under (a) or partnership under (b) or (c) or limited company under (d) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold;

(f) acceptance giving aval or intervention of honor of any bills which the director, the person under (a) or partnership under (b) or (c) or limited company under (d) or (e) is a drawer, a maker of bill or an endorser;

(g) guarantee any debt of the director or person under (a) or

partnership under (b) or (c) or limited company under (d) or (e);

(8) change the location of its head office or branch office without permission of the Bank of Thailand, Such permission may be granted with any condition;

(9) pay money or give any other property to any of its directors, officers or employees as commission or remuneration for or by reason of any transaction or business of the finance company other than gratuities, salaries, bonuses and other allowance which may normally be paid to them;

(10) sell or give any immovable property or movable property with an aggregate value exceeding the amount prescribed by the Bank of Thailand to any of its director, or purchase any property from any of its directors including the person under (a), partnership under (b) or (c) or limited company under (d) or (e) of the second paragraph of (7), except with the approval of the Bank of Thailand;

(11) advertise its business unless such advertisement is carried out in accordance with the rules, procedures and conditions prescribed by the Notification of the Bank of Thailand;

(12) enter into a contract entrusting or allow any other person who is not a director, a manager or an officer of the finance company, with the absolute or part of power of management of the finance company unless prior approval was granted by the Bank of Thailand;

(13) do any act which may cause damage to the economy or the public interest constitute taking unfair advantage of its customers or the persons concerned, or create obstacles to the development of or orderly completion in the financial institution system, or result in unfair economic or monopolistic barriers as prescribed by the Bank of Thailand with the approval of the Cabinet and published in the Government Gazette.

Section 21. A finance company shall notify the Bank of Thailand in writing within fifteen days from the date of the occurrence of the fooling events:

(1) the amendment of its Memorandum of Association or Articles of Association;

(2) the change of any of its directors, managers, or officers or persons with power to manage the affairs of the company.

Section 22. No finance company shall appoint or allow any person with any of the following qualifications or attributes to be or perform the duty of a director, a manager, an officer or a person with power of management, or an adviser:

(1) Being or having been a bankrupt;

(2) having been imprisoned by a final court judgment for an offence related to property committed with dishonest intent;

(3) having been a director, a manager, or an officer or a person with power of management of a financial institution which had its license withdrawn unless an exception has been granted by the Bank of Thailand;

(4) being a director, a manager, or an officer or a person with power of management of any other finance company;

(5) being removed from a position in a finance company under the first paragraph of Section 57 or Section 57 bis (1);

(6) being a government official in political

(7) being a government official having a permanent position or a regular salary or an official of the Bank of Thailand except:

(a) in the case where an appointment is made with the approval of the Minister for the purpose of assisting in the operation of the finance company; or

(b) in the case where an appointment is made under Section 57 bis (2);

(8) being a manager, an officer or a person with power of management of a partnership or a limited company in which such person himself or any person or partnership or limited company as specified in the second paragraph of Section 20 (7) is a partner or a shareholder except:

(a) being a director or an advisor of a finance company who has no power of management:

(b) in the case where the exception has been granted by the Minister as being necessary in rectifying the condition or operation of the finance company;

(c) in the case where an appointment is made under Section 57 bis (2);

(9) Being a person not having the educational qualification, working experience or other qualification as prescribed by the Bank of Thailand with the approval of the Minister;

(10) having other disqualification as prescribed by the Bank of Thailand with the approval of the Minister.

A finance company shall appoint a director, a manager, an officer or a person with power of management, or an advisor of the finance company, or enter into a contract entrusting any person with the absolute power of management of the finance company, only after the approval of the Bank of Thailand is granted. Where the Bank of Thailand considers that the person to be appointed comes under the disqualification specified in the first paragraph, the Bank of Thailand shall not grant its approval, and where it appears at a later date that such person comes under the disqualification specified in the first paragraph, the Bank of Thailand shall withdraw its approval and the finance company shall submit the name of another person to the Bank of Thailand for approval within fifteen days from the date on which such approval is withdrawn.

The provisions of the first paragraph shall apply to the person whom a finance company contractually entrusts with the absolute power of management of the finance company as well as the person who performs duty for such person mutates mutans.

Section 22 bis. A finance company shall maintain books of accounts to record all liabilities and assets completely, correctly and up to date. The standard of accounting shall be as prescribed by the Bank of Thailand.

Section 22 ter. The Bank of Thailand shall have power to issue prescriptions to be complied with by finance companies concerning the procedures of receiving or paying of money, making of any juristic act as well as procedures on internal auditing and internal control.

Section 23. A finance company shall publish its balance sheet and a profit and loss account which have been approved by the general meeting in the form prescribed by the Bank of Thailand within four months from the end of its financial year. The publications shall be posted up in an open place at the finance company's office and shall be published in at least

one daily newspaper within twenty one days from the date on which they are approved by the general meeting unless otherwise prescribed by the Bank of Thailand and shall also be submitted to the Minister and the Bank of Thailand.

A finance company shall publish a statement or disclose other information concerning the finance company in accordance with the method and frequency prescribed by the Bank of Thailand.

The publications or information shall be shown in an open place at the finance company's office and shall be presented to the Minister and the Bank of Thailand, each with one set of copy of such publication attached.

The balance sheet under the first paragraph shall be certified by an auditor who shall be approved by the Bank of Thailand for every financial year and shall not be a director, an officer or an employee of that finance company.

The auditor under the third paragraph shall adhere to the ethical code of auditors, perform the audit work and declare his opinion according to the standards prescribed under the law on the auditors as well as other standards as may be additionally prescribed by the Bank of Thailand. Where an auditor finds that a finance company has made up false supporting account documents and/or made recordings in the books of accounts which are contrary to true facts, he shall make disclosure of the true, if materials to the accounts, and make disclosure of such action in the report of the auditor which he certifies as well as makes report of the matter to the Bank of Thailand.

The Bank of Thailand may withdraw its approval of any auditor who does not comply with the provisions specified in the fourth paragraph.

Section 23 bis. A finance company shall close the books of accounts for each accounting period which shall be every six months of each accounting year. if a finance company has worthless or irrecoverable assets or doubtful assets which may be worthless or irrecoverable, as prescribed by the Bank of Thailand, the finance company shall write off the worthless or irrecoverable assets from the accounts, or make provision for the doubtful assets, at the end of the accounting period, except where a permission to act otherwise has been granted by the Bank of Thailand. Such permission may be granted with any condition.

Where the Bank of Thailand has granted permission under the first paragraph, if it appears that the value of capital funds remaining after deducting that part of such worthless or irrecoverable assets which has not yet been written off from the accounts and/or that part of such doubtful assets for which no provision has yet been made, is less than the value of the capital funds required to be maintained under Section 29, the Bank of Thailand shall have power to prescribe any measure to be taken by the finance company until the worthless or irrecoverable assets concerned have been totally written off from its accounts and full provision has been made for the doubtful assets.

Section 23 ter. The Minister shall have power to order the Bank of Thailand to submit reports concerning the business operation of all or any particular finance companies which shall contain any information and be of any period of time as prescribed, and may also require an explanation to clarify or amplify such reports.

Section 24. The Bank of Thailand may require any finance company to submit reports or present any document periodically or occasionally as prescribed by the Bank of Thailand and may also require an explanation to clarify or amplify such documents or reports.

The reports and documents submitted or presented or the explanations given under the first paragraph shall be complete and accurate.

Section 25. Upon the request of a competent officer, a finance company shall cause its directors, officers, employees or auditors to testify or produce books of accounts, documents and other evidence relating to its affairs as required by the competent officer.

Section 26. Where the Bank of Thailand considers that a finance company:

(1) does not keep its books of accounts in orderly manner or reasonably up to date;

(2) sets an inappropriate match in maturity of money borrowed from the public and repayment of loans or investments; or

(3) lends money to or invests funds in an enterprise in which such finance company, and of its directors, managers, or officers or persons with power of management of such finance company has certain interest, or lends money to a shareholder of such finance company in an excessive amount or with unusually special conditions or provisions;

(4) has done or failed to do any act such that may cause damage to the public in general as follows:

- (a) frequently fails to maintain liquid assets at the prescribed ratio;
- (b) lends money in excess of the prescribed ratio and/or without security in a large amount;
- (c) fails to write off from the account worthless or irrecoverable assets in such amount which will adversely affect the condition of the finance company;
- (d) fails to make provision for doubtful assets, in such amount which will adversely affect the condition of the finance company;
- (e) violates or fails to do any act in accordance with the prescriptions prescribed by the Bank of Thailand with the approval of the Minister; the Bank of Thailand shall have power to order such finance company to rectify the said acts or to take or to omit actions as deemed appropriate by the Bank of Thailand within the prescribed period of time.

If the finance company does not comply with the order of the Bank of Thailand issued in the case of Subsection (4), the Bank of Thailand shall report to the Minister and the Minister shall have power to order such company to be placed under control or order the withdrawal of its license. The provision of the Chapter V shall be applied mutates mutans.

Section 26 bis. Where a finance company has incurred losses to the extent which its capital funds has been reduced to three-fourths of its paid up capital, whether such fact has been found by the finance company itself or as the result of an audit undertaken by the auditor, or the examination conducted by the Bank of Thailand, the finance company shall no longer borrow or receive money from the public unless prior approval has been granted by the Bank of Thailand. In granting such approval, the Bank of Thailand may prescribe any condition concerning the lending money, the making investment or any other matter.

If the losses under the first paragraph are to the extent that its capital funds has been reduced to half of its paid-up capital or less, the finance company shall submit a project for rectification of its condition and operation to the Bank of Thailand for approval within fourteen days from the date that the finance company or the auditor finds such fact, or the date on which the Bank of Thailand notifies the finance company of such fact. In granting such

approval, the Bank of Thailand may also prescribe any dateline or any condition, and shall notify the finance company without delay.

If the Bank of Thailand does not approve the project under the second paragraph, the finance company may appeal to the Minister within fourteen days from the date of receiving of the decision. The decision of the Minister shall be final.

The finance company that incurred losses pursuant to the second paragraph shall immediately cease operation until the Bank of Thailand approves the project for rectification of its condition and operation, or until the Minister has made a decision allowing the finance company to proceed as outlined in the project, unless permission of the Bank of Thailand to undertake any part of its operation is granted.

Where a finance company has to reduce or increase its capital or amalgamate or merge its business with another company according to the project approved under the second paragraph or the decision under the third paragraph, the provisions of this Act which requires it to be a limited public company, the prescription of the minimum amount of registered capital and paid-up capital of a finance company, Section 1225, Section 1226 and Section 1240 of the Civil and Commercial Code and Section 154 and Section 167 of the Limited Public Companies Act, B.E. 2521, as the case may be, shall not apply.

Section 26 ter Any finance company that suspends repayment of its due obligations shall immediately notify the Minister and the Bank of Thailand, and shall not transact any business unless an authorization in writing is granted by the Minister. The finance company shall, within seven days from the date of such suspension, submit an additional report stating the reasons of the suspension of repayment in detail.

Where the Minister has received the notification under the first paragraph, the Minister shall have power to appoint competent officers to make an investigation thereof, and upon receipt of the investigation report there from, the Minister is empowered to order such finance company to be placed under control or order the withdrawal of its license as he deems appropriate. The provisions of the Chapter V shall be applied mutates mutants.

Section 26 quarter. For the purpose of rectifying the condition or operation of a company or maintaining the financial stability or financial institution system, the Minister

with the recommendation of the Bank of Thailand shall have power to order such finance company to suspend its operation entirely or partially for a temporary period of time as prescribed, and in such case. The Minister may also prescribe rules, procedures and conditions.

Section 27. The Bank of Thailand, with the approval of the Minister, has power to require that a finance company, in borrowing or receiving money from the public, complies with the prescriptions regulating the following matters:

- (1) the Minimum amount of money;
- (2) the period of time for repayment;
- (3) the rules and procedures in borrowing or receiving money from the public.

The prescriptions under this Section may be made according to any type of finance business, and type of enterprises or any type of persons.

Section 27 bis. A finance company may accept deposits of money subject to withdrawal at the end of a specified period by issuing a certificate of deposit.

A certificate of deposit shall contain the following particulars:

- (1) the designation of it as a certificate of deposit;
- (2) the name of the finance company which draws the certificate of deposit;
- (3) the date on which the certificate of deposit is issued;
- (4) the province where the certificate of deposit is issued;
- (5) an unconditional agreement to pay a sum certain in money including interest (if any);
- (6) a day of maturity;
- (7) the place of payment;
- (8) the name of the depositor, or a mention that it is payable to bearer;
- (9) the signature of the person authorized to sign on behalf of the finance company which issues the certificate of deposit.

Section 27 ter. The provisions of the Civil and Commercial Code: Section 899 to Section 907, Section 911, Section 913 (1) and (2), Section 914 to Section 916, the first and the third paragraph of Section 917, 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 the certificate of deposit mutates mutants.

Section 28. A Finance company shall maintain liquid assets in proportion to the money borrowed or received from the public to which the finance company is under an obligation to make repayment at not less than the ratio prescribed by the Bank of Thailand with the approval of the Minister.

The prescription of the proportion under the first paragraph may relate to any type of persons from which the finance company has borrowed or received money.

Liquid assets shall be those assets as prescribed by the Bank of Thailand.

In prescribing the liquid assets to be maintained, the Bank of Thailand may specify a ratio of one type of liquid assets in relation to other types of liquid assets, or a ratio to be applied to each type of finance business.

The Bank of Thailand may prescribe that the calculation of such liquid assets, or a ratio to be applied to each type of finance business.

The Bank of Thailand may prescribe that the calculation of such liquid assets be based on an average over any period of time.

Section 29. A Finance company shall maintain its capital funds in proportion to its assets, liabilities or contingent liabilities in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand with the approval of the Minister.

Section 29 bis. A finance company shall maintain its registered capital and its paid up capital in assets in accordance with the type, the procedure and the condition as prescribed by the Bank of Thailand with the approval of the Minister.

Section 30 The Bank of Thailand with the approval of the Minister shall have power to issue prescriptions to be complied with by finance companies concerning the following matters;

(1) interests or discounts payable by a finance company in borrowing or receiving money from the public;

- (2) interests or discounts chargeable by a finance company;
- (3) service charges which may be demanded by a finance company;
- (4) benefits which may be demanded by a finance company in letting goods on hire-purchase;
- (5) security in the form of property which shall be demanded by a finance company.

Any and all the monies, properties or other thing whose value can be assessed in term of money which any person receives from a finance company or an officer or employee of a finance company in the course of the company's borrowing or receiving money, or which a finance company or an officer or employee of a finance company receive in the course of the carrying on of such business of the company, shall be regarded as interests or discounts, service charges or benefits under the provisions of (1), (2), (3) or (4) as the case may be; provided that service charges under (3) shall not be regarded as interests or discounts chargeable by a finance company under (2).

The prescriptions under this Section may relate to any type of finance business or any type of borrowing or receiving money from the public or any type of enterprises, or may specify the method of calculation and the period of time for payment or collection of payment.

Section 31. The Bank of Thailand with the approval of the Minister shall have power to require that finance companies comply with the following prescriptions concerning hire-purchases engaged in by finance companies which undertake the business of finance for disposition and consumption or the business of finance for housing:

- (1) the amount of first payment and subsequent installments to be in certain proportion to the total amount of money under each hire-purchase;
- (2) the duration of hire-purchase;
- (3) the procedure for making payment;
- (4) the condition for the forfeiture of money already received and the repossession of property under hire-purchase;
- (5) the method of disclosing the benefits accrued to the finance companies.

Section 32. For the purpose of national development or rectification of any adverse economic condition, the Bank of Thailand with the approval of the Minister shall have power to require that a finance company complies with the prescriptions regulating the following matters:

(1) the lending of money to any type of enterprises at not less than a prescribed rate;

(2) the maximum amount of money which a finance company may lend to, or may accept or give avail to bills arising from any type of enterprises, or the maximum amount of money in which a finance company may make hire-purchase agreements;

(3) the maximum amount of money for which a finance company may make hire-purchase agreements for any type of immovable or movable property and/or lend to persons carrying on hire-purchase business of such type of immovable or movable property.

Section 33. The rates prescribed under Section 32(1) shall be in proportion to the total amount of money which a finance company has borrowed and received from the public at any time, and such rates prescribed shall not altogether amount to more than twenty per cent of the said total amount of money.

The maximum amount of money prescribed under Section 32(2) may be in proportion to the total amount of money which a finance company has lent and/or which a finance company has accepted and given avail to bills, or the total amount of money for which a finance company has made hire-purchase agreements, and which is still outstanding at any time, or in proportion to the capital funds of a finance company or to the total amount of money which a finance company has borrowed and received from the public at any time.

The maximum amount of money prescribed under Section 32(3) may be in proportion to the total amount of money which a finance company has made hire-purchase agreements and/or which a finance company has lent to persons carrying on the business of letting property amount of money for which a finance company has made hire-purchase agreements for such type of immovable or movable property and/or has lent to persons carrying on the business of letting such type of immovable or movable property on hire-

purchase agreements and which is still outstanding on a specified date, or in proportion to the capital funds of a finance company.

Section 34. A finance company shall comply with the rules and procedures prescribed by the Bank of Thailand with the approval of the Minister regulation the following matters:

(1) the making of investment in securities to be owned by the finance company itself;

(2) the lending of money for the purchase of securities or against securities.

Section 35. No finance company shall lend money, invest in the business of any person, undertake contingent liabilities or pay money under contingent liabilities for any person, either one or several transactions in combination, at the end of any one day in excess of the amount of money or the ratio to all capital funds or any or several types of capital funds stipulated in the rules, procedures and conditions prescribed by the Bank of Thailand with the approval of the Minister, except with the permission of the Bank of Thailand. Such permission may be granted with any condition.

Lending of money or investing in the business of the following person or partnership, or undertaking contingent liabilities or paying money under contingent liabilities for the following person or partnership, shall be deemed to be lending of money, investing, undertaking Contingent liabilities or paying money under contingent liabilities for the person under the first paragraph:

(1) the spouse of the person under the first paragraph;

(2) a minor child of the person under the first paragraph;

(3) an ordinary partnership in which the person under the first paragraph or the person under (1) or (2) is a partner;

(4) a limited partnership in which the person under the first paragraph or the person under (1), (2) or (3) is a partner with unlimited liability or in which one or more of such persons is a partner or are partners with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;

(5) a limited company in which the person under the first paragraph or the

person under (1) or (2) or the partnership under (3) or (4) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold.

In the cases of lending of money, undertaking contingent liabilities or paying money under contingent liabilities under the first paragraph, if the person under the first paragraph is a partnership or a limited company, the amount of money to be lent, undertaken contingent liabilities or paid under contingent liabilities shall not, in an aggregate amount, exceed the ratio to capital or capital funds of such person as prescribed by the Bank of Thailand, except with the permission of the Bank of Thailand. In granting such permission, the Bank of Thailand may grant it only in relation to some type of finance business and may also prescribe any condition.

The prescriptions under this Section Amy relate to each type of finance business.

Section 36. The provisions of Section 35 shall not apply in the case where a finance company:

(a) lends money or makes investment by buying Thai Government securities of other securities prescribed by the Bank of Thailand;

(b) lends money on the security of Thai Government securities or other property prescribed by the Bank of Thailand, but only to the extent of the amount not exceeding the Value of the security. In computation of the value of the security, if the security is value; if the security is in the form of other securities or other property, the value to be computed shall be the market value, but if there is no market value, the value to be computed shall be as prescribed by the Bank of Thailand.

Section 37. A finance company shall open its office to the public for business during the working hours and close its office on the holidays as prescribed by the Bank of Thailand, unless permission has been granted by the Bank of Thailand to open or close its office any other hours or days. Such permission may be granted with any condition to be complied with.

Section 38. The prescriptions under Section 20 (2) (c) and (11), Section 27, Section 28, Section 29, Section 30, Section 31, Section 32, Section 34, Section 35, Section 36

and Section 37, prescription of condition in the permissions granted, shall be published in the Government Gazette.

CHAPTER III

Securities Companies³²

Section 39 to Section 49. (Repealed)

CHAPTER IV

Credit Foncier Companies

Section 50. No person other than a credit foncier company shall engage in credit foncier business.

Section 51. A credit foncier company shall use a name which includes the words “credit foncier company” at the beginning and the word “limited” at the end.

Section 52. No person other than a credit foncier company shall, in the conduct of its business, make use of the name or description of a “credit foncier company” or any other word or words having the same meaning.

Section 53. A credit foncier company shall have a registered capital and a paid-up capital in such amounts as prescribed by the Minister each of which amounts shall not be less than thirty million bath.

Section 54. No credit foncier company shall :

- (1) reduce or increase its capital without an authorization of the Minister, such authorization may be granted with any condition as the Minister may prescribe ;
- (2) lend money except on the security of property as a first mortgage ;
- (3) lend money to any of its directors, and the provisions of the second paragraph of Section 20 (7) shall apply mutates mutandis ;
- (4) engage in any business other than the type of credit foncier business authorized, except with an authorization of the Minister; such authorization may be granted with any condition as the Minister may prescribe.

The letting to the public under a hire-purchase agreement of an immovable property for which ownership has been transferred from the seller of such immovable property after

another person has agreed to hire-purchase such property, as well as the letting under a hire-purchase agreement of an immovable property of which a credit foncier company has taken repossession as a result of a breach of contract by the hire-purchaser, may be undertaken by a credit foncier company in accordance with the rules, procedures and conditions prescribed by the Bank of Thailand with the approval of the Minister; such prescription shall be published in the Government Gazette;

(5) purchase or hold immovable properties except:

(a) those for use reasonably as premises of the business of the credit foncier company or as places of residence or welfare facility for its officers or employees as permitted by the Bank of Thailand;

(b) those acquired by a credit foncier company as result of the purchase of an immovable property mortgaged to the credit foncier company at an auction conducted pursuant to an order of a court or an official receiver or the transfer of an immovable property for a debt settlement, but such immovable properties shall be disposed of within five years from the date of passing of ownership of such immovable properties to the credit foncier company or with such longer period of time as permitted by the Bank of Thailand;

(c) those of which the ownership has been transferred to a credit foncier company for the purpose of letting them under hire-purchase agreements in accordance with the second paragraph of (4); after the hire-purchased have been made, the credit foncier company may not subject such immovable properties to mortgages or to any property rights, except with the permission of the Bank of Thailand;

(d) those acquired by a credit foncier company as a result of agreements for sale with the right of redemption, but such immovable properties shall be disposed of within five years after the periods of redemption on such immovable properties have expired under the terms of the agreements or under the provisions of law, as the case may be, or within a longer period of time as permitted by the Bank of Thailand;

The permission under (a), (b), (c) or (d) may be granted with any condition as the Bank of Thailand may prescribe;

(6) purchase or hold shares of any limited company in an amount exceeding ten per

cent of the total amount of such company's shares sold or purchase or hold shares or debentures at an aggregate value, separately or in combination exceeding twenty per cent of the capital funds of the credit foncier company, unless permitted by the Bank of Thailand; such permission may be granted with any condition to be complied with;

(7) procure funds from the public unless through the issuance of debentures or the borrowing of money repayable within a minimum period of one year in accordance with the rules and procedures concerning the borrowing, the repayment and the minimum amount of money as prescribed by the Bank of Thailand with the approval of the Minister; such prescription shall be published in the Government Gazette;

(8) change the location of its head office or branch office without permission of the Bank of Thailand; which permission may be granted with any condition as the Bank of Thailand may prescribe;

(9) advertise its business unless such advertisement is carried out in accordance with the rules, procedures and conditions prescribed by the Notification of the Bank of Thailand in the Government Gazette.

Section 55. In an agreement by which a credit foncier company lends money on a mortgage, there shall be a provision reserving the absolute right of the borrower to repay all or part of the money before the times specified in the agreement. In such case, the credit foncier company may demand compensation at a rate not exceeding that prescribed by the Bank of Thailand with the approval of the Minister.

In an agreement by which a credit foncier company lets an immovable property under hire-purchase term, there shall be a provision reserving the absolute right of the hire-purchased to pay all the hire-purchase price before the time specified in the agreement, In such case, the credit foncier company shall reduce the hire-purchase price at the rate prescribed by the Bank of Thailand with the approval of the Minister.

The prescription under this Section may include a condition to be complied with and shall be published in the Government Gazette.

Section 56. The provisions of the second and the third paragraphs of Section 14, Section 15, Section 16, Section 17, Section 18, Section 19, Section 20, (13), Section 21,

Section 22, Section 22 bis, Section 22 ter, Section 23, Section 23 bis, Section 23 ter, Section 24, Section 25, Section 26, Section 26 bis, Section 26 ter, Section 26 quarter, Section 28, Section 29, Section 29 bis, Section 30, Section 31, Section 32, Section 33, Section 35, Section 36, Section 37 and Section 38 shall apply to credit foncier companies mutates mutandis.

CHAPTER V

Supervision of Companies, Revocation of Licenses, and Dissolution of Companies

Section 57. Where there is evidence that the condition or operation of any company is such that damage may be caused to the public interest, the Bank of Thailand shall have power to order such company to rectify the condition or operation within the period of time prescribed by the Bank of Thailand. In such case the Bank of Thailand may also order such company to increase or reduce its capital.

In the event the Minister deems that the condition or operation of any company is such that serious damage may be caused to the public interest, the Minister shall have power to order such company to be placed under control or order the withdrawal of its license. However, in the case where the company has taken measures to rectify its administration or has taken any other action in accordance with the recommendation of the Minister within the period of time specified by the Minister, the Minister may postpone ordering control of the company or withdrawal of its license, and in such case the Minister may also prescribe any condition to be complied with by the company for the purpose of rectifying the condition or operation of the company.

In the event the Minister orders control over any company under the second paragraph, the Minister shall have power to order such company to suspend its business operations entirely or partially for a temporary period as prescribed by the Minister.

Section 57 bis. Where there is evidence that the condition or operation of any company is such that damage may be caused to the public interest, or where the directors, managers or persons responsible for the operation of any company fail to comply with the order of the Bank of Thailand under the first paragraph of Section 57 or Section 57 ter, the Bank of Thailand shall have power to order such company to remove its directors, managers or persons responsible for its operation who having caused such condition or operation of the

company. If the Bank of Thailand orders the removal of any person, such company shall, with the approval of the Bank of Thailand, appoint other persons to replace the persons so removed within thirty days from the removal date. Where a company fails to remove such persons or remove but fails to appoint other persons in their places, the Bank of Thailand with the approval of the Minister shall have power to issue the following orders:

(1) removal of its directors, managers or persons responsible for the operation of the company whom the company fails to remove;

(2) appointing one more persons to replace the person removed for a period not longer than three years. The person so appointed shall be entitled to a remuneration to be paid from the assets of the company as prescribed by the Minister. During the period that the persons so appointed hold office, shareholders of the company may not pass a resolution to revoke or change the orders of the Bank of Thailand.

The person removed shall no longer be involved in or manage, directly or indirectly, any affair of the company, and shall facilitate and inform facts to the person under (2) or in the manner as a competent officer may prescribe.

For the purpose of this Section, the order of the Bank of Thailand issued by virtue of this Section shall be deemed to be resolution of a shareholders' meeting under the Civil and Commercial Code or the e law on limited public companies, as the case may be.

Section 57 ter. In the event a company fails to increase or reduce its capital within the period of time prescribed by the Bank of Thailand under the first paragraph of Section 57, the order of the Bank of Thailand shall be deemed to be a resolution of the shareholder's meeting from the end of the prescribed period.

Where there is an urgent need for a company to increase or reduce its capital in order to survive and carry on business, the Bank of Thailand may order the company to increase or reduce its capital immediately. Such an order is deemed to be a resolution of the shareholders' meeting.

The provisions of this Act on the minimum amount of registered capital and paid-up capital of a company and Section 1220, Section 1224, Section 1225 and Section 1226 of the Civil and Commercial Code and the second paragraph (2) of Section 149, Section 152 and

Section 154 of the Limited Public Companies Act, B.E. 2521 as the case may be shall not apply to the increasing or reducing of capital under the first and second paragraph of this Section.

Section 58. In ordering control of a company or withdrawal of a license under the second paragraph of Section 57, the Minister shall notify the company in writing to that effect. Copies of such order shall be posted up in an open place at the finance company's office and shall be published in the Government Gazette and in at least one daily newspaper.

Section 59. In placing a company under control, the Minister shall appoint a Control Committee consisting of a chairman and not less than two other committee members. Such committee shall have the power and duty to manage the affairs of the company in all respects, and the chairman of the committee shall be the representative of that company.

In the event the chairman of the committee is unable to perform his duty, the Minister shall appoint any committee member to act in his stead.

The committee shall have power to appoint one or several control officers and to determine the power and duty of such officers.

The appointment of such committee and the appointment of a member to act in place of the chairman shall be published in the Government Gazette.

Section 60. After the Minister has given notice of the order of control to a company:

(1) the directors and employees of the company shall not conduct the business of that company any further unless authorized by the Control Committee;

(2) the directors, officers and employees of that company shall take proper actions in order to safeguard the company's properties and interests and shall promptly report its affairs and deliver, without delay, its properties together with books of accounts, documents, seals and other evidence relation to its affairs, assets and liabilities to the Control Committee.

Section 61. Where any company has been placed under control, any person in possession of properties or documents of that company shall notify the Control Committee thereof without delay.

Section 62. For the purposes of Section 57 the Control Committee or an authorized control officer shall have power to order any person to testify or to produce or deliver books of

accounts, documents, seals or other evidence relating to the affairs, assets and liabilities of the company placed under control.

Section 63. If the Control Committee considers that a company under control is able to continue its business operation, the committee shall notify the Minister to that effect, The Minister shall then, if he deems appropriate, order that the control on the company be revoked, and shall publish such order in the Government Gazette and in at least one daily newspaper.

If the Control Committee considers that a company under control is unable to continue its business operation, the committee shall notify the Minister to that effect. The Minister shall then, if he deems appropriate, order the withdrawal of the license of the company, and shall publish such order in the Government Gazette and in at least on daily newspaper.

Section 64. In the event any company fails carry on the types of business as licensed to the extent deemed appropriate by the Minister during a period of any two consecutive years, the Minister may then order the withdrawal of the license to engage in all any type of business for which the license had been granted.

Section 64 bis. In the case where the Minister orders the withdrawal of a company's license under the second paragraph of Section 57, the second paragraph of Section 63, or where the Minister orders the withdrawal of a company's license of all types of business under Section 64, such company shall be dissolved as a limited company.

Section 65. Whenever any company wishes to discontinue the carrying on of the types of business for which the license has been granted, it shall apply for permission to discontinue the carrying on of such types of business from the Minister. Such permission may by granted with any condition.

Section 65 bis When any finance company or credit foncier company has incurred losses in accordance with the second paragraph of Section 26 bis, such company shall be dissolved and its license shall be deemed to be withdrawn if any of the following occurs;

(1) the company does not submit a project for rectification of its condition and operation within the time specified under the second paragraph of Section 26 bis;

(2) the company does not comply with the project which is approved under Section

26 bis within the time prescribed as conditioned by the Bank of Thailand;

(3) in the case where the Bank of Thailand did not approve the project under the second paragraph of Section 26 bis, and the company does not appeal to the Minister within the time specified in the third paragraph of Section 26 bis;

(4) the Minister passes a decision confirming the disapproval of the Bank of Thailand under the third paragraph of Section 26 bis.

Section 66. Where a company is dissolved under Section 64 bis or Section 65 bis, it shall be liquidated, and the Minister shall appoint a liquidator therefore.

Liquidation shall be carried out in accordance with the provisions of the Civil and Commercial Code on the liquidation of limited companies or the law on limited public companies on liquidation of such limited public companies, as the case may be, except that the power and duty of the general meeting shall be the power and duty of the Minister.

Section 67. Members of the Control Committee, control officers and liquidators may receive such remuneration as prescribed by the Minister.

The expenses and remunerations incurred in the control or liquidation of a company shall be paid from the assets of the company.

CHAPTER VI

Competent officers

Section 68. In the performance of his duty, a competent officer shall have power to:

(1) order any director, office employee or auditor of a company or any person who provides computerized or whatsoever data processing service for a company to testify, or to deliver copies of or to produce the actual books of accounts, documents, seals or other evidence concerning the affairs, assets and liabilities of the company;

(2) enter into business premises of a company or into places where there is computer equipment or whatsoever equipment used for data processing service for a company;

(3) enter into any premises, where there are reasonable ground for suspecting that an offence under Section 11 or Section 50 is to have been committed therein or that evidence or documents connected with the commission of an offence under the aforesaid Section are to be found therein for the purpose of inspection during the hours between sunrise and sunset;

(4) seize or attach properties, documents or things or things connected with the commission of an offence under this Act for inspection or prosecution purposes;

(5) enter into business premises of the company's debtor for inspection of condition or operation.

All persons concerned shall reasonably facilitate a competent officer in the performance of his duty under the first paragraph.

Section 69. In the performance of his duty, a competent officer shall produce his identification card to the persons concerned.

The identification card of a competent officer shall be in the form prescribed by ministerial regulation.

CHAPTER VII

Penal Provisions

Section 70. Any company which violates or fails to comply with the provisions of Section 10, Section 12, the first paragraph of Section 14, Section 15, Section 17, Section 18, Section 19, Section 20, Section 21, Section 22 bis, the first, the second or the third paragraph of Section 23, the first paragraph of Section 23 bis, Section 24, Section 25, the first or the fourth paragraph of Section 26, bis, the first paragraph of Section 26 ter, Section 27, Section 28, Section 29, the first or the second paragraph of Section 30, Section 31, Section 32, Section 34, the first or the third paragraph of Section 35, Section 37, Section 51, Section 53, Section 54 or Section 55, or violates or fails to comply with conditions prescribed or the orders made under Section 9, Section 10, Section 20 (1), (2), (4), (5), (6), (8) or (11), Section 22 ter, Section 23 bis, the second paragraph of Section 26 ter, Section 26 quarter, Section 29 bis, the first or the third paragraph of section 35, Section 37, Section 54 (1), (4), (5), (6), (8) or (9), Section 55, Section 57, Section 57 bis, Section 57 ter or Section 65, or violates or fails to comply with the rules or conditions in the ministerial regulations under the third paragraph of Section 7, shall be liable to a fine not exceeding one hundred thousand bath, and to a further fine not exceeding tree thousand bath per day for every consecutive day during which such violation continues or until rectification has been made,

Section 71. Whoever violates the provisions of Section 11 or Section 50 shall be liable to imprisonment for a term of two to five years and a fine of two hundred thousand to five hundred thousand bath, and to a further fine not exceeding ten thousand bath per day for every consecutive day during which such violation continues.

Section 72. Whoever violates the provisions of Section 10 bis, Section 13 or Section 52 or fails to comply with the conditions prescribed under Section 10 bis, shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand to three hundred thousand bath, and to a further fine not exceeding two thousand bath per day for every consecutive day during which such violation continues.

Section 73. Whoever violates the provisions of the second paragraph of Section 57 bis, Section 60 or Section 61, or violates the orders of the Control Committee or of the control officers made under Section 62, shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding three hundred thousand bath, and to a further fine not exceeding one thousand bath per day for every consecutive day during which such violation continues.

Section 73 bis. Whoever gives a false statement to a competent officer which may cause damage to the other or the public shall be liable to imprisonment for a term not exceeding six months and a fine not exceeding sixty thousand bath.

Section 74. Whoever obstructs, fails to comply with the orders of or fails to facilitate a competent officer in the performance of his duty under this Act shall be liable to imprisonment for a term of not exceeding six months and a fine not exceeding sixty thousand bath.

Section 74 bis. Whoever removes, damages, destroys or renders useless of any seal or mark which a competent officer stamped or affixed on any thing in the course of performance of his duty for the sake of being evidence of the seizure, attachment or keeping of such thing, shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding three hundred thousand bath.

Section 74 ter. Whoever damages, destroys, conceals, takes away, loses or renders useless of any property or document which a competent officer seized, attached, kept or

ordered to be sent as evidence or for execution of the law, whether the competent officer keeps such property or document by himself or orders such person or any other person to send or keep it, shall be liable to imprisonment for a term of six months to three years and a fine of sixty thousand to three hundred thousand bath.

Section 75. In the case where a company violates or fails to comply with Section 10, the first paragraph of Section 14, Section 22 bis, the first, the second or the third paragraph of Section 23, Section 24, Section 25, Section 37 or Section 53, its directors or managers or any person responsible for its operation shall be liable to imprisonment for a term not exceeding three years and a fine of not exceeding three hundred thousand bath, unless he can prove that he had no part in the commission of such offence of the company.

In the case where a company violates or fails to comply with Section 20, Section 23 bis, the first or the fourth paragraph of Section 26 bis, the first paragraph of Section 26 ter, Section 28, Section 29, the first or the second paragraph of Section 30, Section 32, the first or the third paragraph of Section 35, Section 54 or Section 55, or violates or fails to comply with the conditions prescribed or orders made under Section 9, Section 10, Section 20 (1), (2), (4), (6) or (11), Section 22 ter, Section 23 bis, the second paragraph of Section of Section 26, the first or the second paragraph of Section 26 bis, Section 29 bis, the first or the third paragraph of Section 35, Section 54 (1), (4), (5), (6) or (9), Section 55 or the first or the second paragraph of Section 57, its directors or managers or any person responsible for its operation shall be liable to imprisonment of two to five years and a fine of two hundred thousand to five hundred thousand bath, unless he can prove that he had no part in the commission of such offence of the company.

Section 75 bis. Any director, manager or person responsible for the operation of a company, who dishonestly deceives the public by the assertion of falsehood or the concealment of facts which should be revealed to the public and, by such deception, obtains a property from a number of the public so deceived or from a third person, or causes the public so deceived or a third person to execute, revoke or destroy a document of right, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million bath.

Section 75 ter. Any director, manager or person responsible for the operation of a company, who being entrusted with the management of the property of the company or of which the company is a co-owner, dishonestly does an act contrary to his duties, by any means whatever, so as to cause damage to the usefulness in the nature of it being a property of the company, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million bath.

Section 75 quarter. Any director, manager or person responsible for the operation of a company, who being in possession of a thing belonging to the company or of which the company is a co-owner, dishonestly converts the thing to himself or a third person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million bath.

Section 75 sex. Any director, manager or person responsible for the operation of a company, who knowing that a creditor of the company or creditor of another person who may avail himself of the right of a creditor of the company to enforce payment of debt from the company, is using or will probably use his right through the courts to enforce payment:

- (1) removes, conceals or transfers property of the company to another; or
- (2) maliciously creates false debts for the company; if such action is done in order to prevent the creditor from receiving full or part payment of the debt, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million bath.

Section 75 septem. Any director, manager or person responsible for the operation of a company who acts or refrains from acting in order to obtain any unlawful gain for himself or another person to the damage of the company shall be liable to imprisonment for a period of five to ten years and a fine of five hundred thousand to one million baht.

Section 75 octo. Any director, manager or person responsible for the operation of a company who commits or permits the commission of the following acts:

- (1) damage, destruction, alteration or falsification of accounts, documents or securities belonging to or concerning the company;
- (2) false entry or failure to enter matters of import in the accounts or documents

belonging to or concerning the company; or

(3) keeping books of accounts which are not complete, not correct or not up to date or contrary to true facts; it done or permitted in order to deceitfully deprive the company or the company's shareholders of rightful gains, or to deceive any person, shall be liable to imprisonment for a period of five to ten years and a fine of five hundred thousand to one million baht.

Section 75 novem. Any auditor of a company who certifies a balance sheet or any other accounting statement which is incorrect, or makes a false report or violates the fourth paragraph of Section 23, shall be liable to imprisonment for a period of three months to three years and a fine of thirty thousand to three hundred thousand baht.

Section 75 decem. Whoever caused a director, a manager or a person responsible for the operation of company or the auditor to commit an offence provided in Section 75 bis, Section 75 ter, Section 75 quarter, Section 75 quinqué, Section 75 sex, Section 75 septem, Section 75 octo or Section 75 novem, whether by employment, making order, threat, hire, or by any other means shall be liable to the same punishment as prescribed in such and such section.

Section 75 undecim. Whoever, by any means whatever, does any act to assist or facilitate a director, a manager or a person responsible for the operation of a company I committing the offence provided in Section 75 bis, Section 75 ter, Section 75 quarter, Section 75 quinqué, Section 75 sex, Section 75 septem and Section octo, whether before or at the time of committing the offence, shall be liable to the same punishment as provided in such and such section unless the person does not know of such assistance or facility.

Section 75 duodecim. The public prosecutor, when instituting criminal prosecution under Section 75 bis, Section 75 ter, Section 75 quarter, Section 75 quinqué, Section 75 sex, Section 75 septe, Section 75 octo, Section 75 novem, Section 75 decem or Section 75 undecim, shall have power to claim the restitution of the property or the value thereof or damages on behalf of the injured person and shall be exempted from the Court's fee.

Section 75 tredecim. In the case where there is evidence that any person committed an offence under Section 75 bis, Section 75 ter, Section 75 quarter, Section 75 quinqué,

Section 75 sex, Section 75 septem, Section 75 octo, Section 75 novem, Section 75 decem or Section 75 undecim and the Bank of Thailand considers that damage to the public interest may be caused unless an immediate action is taken, the Bank of Thailand shall have power to order the seizure or attachment of properties of that person, or properties which may legally be deemed to be properties belonging to that person. The seizure or attachment may not be longer than one hundred and eighty days unless a case has been filed in Court, in which event the order of seizure or attachment shall continue to operate until the Court orders otherwise, Where circumstances render it impossible to file a case in Court within one hundred and eighty days, the Court having territorial jurisdiction may extend the period of seizure or attachment as requested by the Bank of Thailand.

The Bank of Thailand shall have power to appoint officials of the Bank of Thailand to seize or attach properties under the first paragraph.

The provisions of the Revenue Code shall apply to seizure or attachment of properties under the first paragraph *mutates mutandis*.

In the case under the first paragraph, and where there is reasonable ground for suspecting that the said person is about to abscond from the Kingdom, the Criminal Court shall have power to restrain that person from leaving the Kingdom when requested by the Bank of Thailand, or in the case of emergency, when the Governor of the Bank of Thailand or a person designated by the Governor notify the Director General of the Police Department, the Director General of the Police Department shall have power to restrain that person from leaving the Kingdom for a temporary period not more than fifteen days until the Criminal Court orders otherwise.

Whoever violates the order of the Criminal Court or the Director General of the Police Department made under the provisions of the fourth paragraph shall be liable to imprisonment for a term not exceeding ten years and to a further fine not exceeding one million baht.

Section 76. In the case of an offence under Section 70, if the offender has not been prosecuted or the offence has not been settled out of court under Section 79 within one year from the date of a competent officer finding out such offence or within five years from the

date of its commission, such offence shall, by prescription, be no longer subject to prosecution.

Section 77. Whoever in the performance of his duty under the authority prescribed in this Act, having acquired knowledge of the affairs of a company which, in normal business, is to be held in confidence reveals such knowledge, except in the performance of his duty or for the purpose of investigation or trial or being the revelation of the commission of the offences under this Act, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht or both.

Section 78. In the case where the person committing an offence under Section 71, Section 72 or Section 73 is a juristic person, its directors or any person responsible for its operation shall also be liable to punishment as prescribed for such offence, unless he can prove that he had no part in the commission of the offence of that juristic person.

Section 79. A committee appointed by the Minister shall be empowered to settle out of court any offence under Section 70 or Section 75.

The committee appointed by the Minister under the first paragraph 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 paid the fine as fixed within the period or time specified by the committee, such settlement of the case shall be regarded as final.

Transitional Provisions

Section 80. It shall be deemed that a company already licensed to engage in any type of finance business, securities business or credit foncier business, under the law on the control of commercial undertakings affecting public safety or welfare on the date of this Act coming into force is a company which has been licensed to engage in such type of finance business, securities business or credit foncier business, as the case may be, under the provisions of this Act and it shall be deemed that a branch office of such company authorized under the said law on the date of this Act coming into force is a branch office of such company

which has been authorized under the provisions of this Act, subject to the conditions prescribed by the Minister in the license or authorization granted.

Section 81. Any finance company or credit foncier company under Section 80 of which the number of shareholders or directors of Thai nationality is less than the rate prescribed in the third paragraph of Section 17, on the date of this Act coming into force, may continue to have shareholders or directors of Thai nationality at such rate; but if any finance company or credit foncier company under Section 80 has shares held by persons of Thai nationality at less than three-fifths of the total amount of shares sold or has directors of Thai nationality at less than three-fifths of the total number of directors, such finance company or credit foncier company shall take actions to have shares held by persons of Thai nationality at not less than three-fifths of the total amount of shares sold or to have directors of Thai nationality at not less than three-fifths of the total number of directors within a period of seven years from the date of this Act coming into force.

Section 82. Any person who holds shares of a finance company or a credit foncier company in excess of the percentage prescribed under Section 14, on the date of this Act coming into force shall be entitled to continue holding all such shares, but if any such shares has been disposed of, he shall be entitled to hold shares in excess of the prescribed percentage only to the extent of the excess shares remaining.

The provisions of the first paragraph shall apply *mutates mutandis* to statutory heirs who inherit such shares on or after the date of this Act coming into force.

The provisions of Section 18 shall not apply to a shareholder who holds shares in accordance with the rules specified in the first and the second paragraph.

Section 83. Any finance company or credit foncier company established in the form of a limited company under the Civil and Commercial Code and licensed to undertake finance business or credit foncier business under the law on the control of commercial undertakings affecting public safety or welfare on the date of this Act coming into force shall be allowed to continue as a limited company under the Civil and Commercial Code, and if such finance company or credit foncier company has already issued shares in contravention of Section 16 and and/or has any shareholder in contravention of the first paragraph of Section 17, such

finance company or credit foncier company shall rectify such contravention to comply with Section 16 or the first paragraph of Section 17, as the case may be, within seven years from the date of this Act coming into force by fulfilling the following conditions:

(1) within three years from the date of this Act coming into force, actions shall be taken to have at least fifty shareholders who are natural persons holding altogether not less than twenty five per cent of the total amount of shares sold;

(2) within five years from the date of this Act coming into force, actions shall be taken to have at least seventy five shareholders who are natural persons holding altogether not less than forty per cent of the total amount of shares sold;

(3) within seven years from the date of this Act coming into force, actions shall be taken to have at least one hundred shareholders who are natural persons holding altogether not less than fifty per cent of the total amount of shares sold.

For the purpose of compliance with the provisions of (1), (2) or (3) of the first paragraph, if there is necessity as well as justification the Minister may extend any of such periods time; such extension of time may be granted with any condition.

Section 84. Within seven years from the date of this Act coming into force or within a period of time as extended by the Minister under Section 83, in the case where any finance company or credit foncier company, licensed to undertake finance business or credit foncier business before such date, wishes to increase its capital by issuing new shares, if such finance company or credit foncier company has not been registered as a limited public company, such finance company

The provisions of the Civil and Commercial Code on the prohibition of limited companies under the Civil and Commercial Code to invite the public to subscribe for shares and those on the offer of new shares shall not apply to a capital increase under this Section.

Section 85. (Repealed)

Section 86. Any finance company, securities company or credit foncier company under Section 80 which already has the capital in the amount specified in the first paragraph of Section 14, Section 42 or Section 53, as the case may be, and of which the shareholders meeting has passed a special resolution to increase the capital under such special resolution

without being required to obtain authorization under Section 20(1), Section 43(1) or Section 54(1), as the case may be.

Section 87. In the event a securities company under Section 80 has already engaged in any business which is prohibited under Section 43(6) on the date of this Act coming into force, such securities company shall discontinue such business activities completely within one year from the date of this Act coming into force.

In the case where such securities company cannot terminate such business prohibited under Section 43(6) within the period of time prescribed in the first paragraph by reason of obligations under a juristic act, such securities company shall apply for permission from the Minister, and the Minister shall then grant an extension of the said period of time as he deems appropriate. Such extension may be granted with any condition.

Section 88. Finance companies, securities companies or credit foncier companies under Section 80 shall complete its compliance with the provisions of Section 12, Section 40 or Section 51, as the case may be, within a period of one hundred and eighty days from the date of this Act coming into force.

A finance company under Section 80 which has already been licensed to engage in the securities business on the date of this Act coming into force shall use a name which includes the words “finance-securities company” at the beginning and the word “limited” at the end; the actions to be taken so as to comply with this paragraph shall be completed within the period of time prescribed under the first paragraph.

Section 89. Any person already using a name or description of a “finance company”, or any other word or words having the same meaning, on the date of this Act coming into force when such person is prohibited to do so under Section 13, Section 41 or Section 52, shall stop using such name or such other words within one hundred and eighty days from the date of this Act coming into force.

Section 90. Any finance company under Section 80 which has accepted shares of any other finance company as security or which holds shares in any limited company in an amount exceeding ten per cent of the total amount of such company's shares sold, or which holds shares in any other finance company, on the date of this Act coming into force, or

which holds shares in any other finance company, on the date of this Act coming into force, shall comply with the provisions of Section 20(3), (4) or (5), as the case may be, within one year from the date of this Act coming into force or within a longer period of time as permitted by the Minister.

Section 91. Any credit foncier company under Section 80 having immovable property for the purpose of engaging in the business of hire-purchases on the date of this Act coming into force, shall notify the Bank of Thailand within ninety days from the date of this Act coming into force and shall take actions or dispose of such immovable property in accordance with the conditions and within the period of time prescribed by the Bank of Thailand.

Section 92. It shall be deemed that an agreement made by a credit foncier company to let an immovable property on hire-purchase terms prior to the date of this Act coming into force contains a reservation of the absolute right of the hire-purchaser to pay all the hire-purchase price prior to the time specified in the said agreement, and the credit foncier company shall also comply with the provisions of the second paragraph of Section 55.

Section 93. Any company under Section 80 having a director, manager, officer or person with power of management or adviser with qualifications or attributes as prohibited under the provisions of Section 22 on the date of this Act coming into force shall comply with the provisions of Section 22 within ninety days from the date of this Act coming into force.

Section 94. The Notifications of the Ministry of Finance issued by virtue of the provisions of the National Executive Council Announcement No. 58, dated 26th January, 1972, and the Notifications and conditions of the Ministry of Finance and the Notifications and conditions of the Bank of Thailand issued by virtue of the Notifications of the Ministry of Finance in effect on the date of this Act coming into force shall remain in effect in so far as they do not conflict for are not inconsistent with the provisions of this Act until such time as the Ministerial Regulations, Notification or conditions under this Act come into force.

Section 95. Any finance company or credit foncier company under Section 80 which fails to rectify its contravention concerning its number of shares or directors within the period of time prescribed under Section 81 or fails to rectify its contravention concerning its

shares or shareholders so as to comply with Section 16 or the first paragraph of Section 17 as the case may be, within the period of time prescribed or extended by the Minister under Section 83 shall be liable to a fine not exceeding one hundred thousand thousand baht and to a further fine not exceeding three thousand baht per day for every consecutive day during which such contravention continues.

Section 96. Any finance company or credit foncier company under Section 80 which fails to comply with Section 84 shall be liable to a fine not exceeding one hundred thousand baht.

Section 97. The committee appointed under Section 79 shall have power to settle out of court any offence under Section 95 and Section 96 and the provisions of Section 76 shall apply mutates mutandis.

Countersigned by

S. Hotrakit

Deputy Prime Minister

RATES OF FEES

- | | |
|-----------------------------------------------------------------------------------------------------------------|-------------|
| (1) Application for a license to engage in finance business,
securities business or credit foncier business. | 500 baht |
| (2) License to engage in any one type of finance business,
securities business or credit foncier business. | 10,000 baht |