

Unofficial Translation

This translation is for the convenience of those unfamiliar with the Thai language.

Please refer to Thai text for the official version.

Ministry of Finance Notification

Re: Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58
(Nano Finance Under Supervision)

By virtue of the power conferred by Clause 5, Clause 7, Clause 8 and Clause 14 of the Revolutionary Council Decree 58 dated 26 January 1972 (B.E. 2515) regarding regulation of trading businesses which impact public safety and well-being, the Minister of Finance hereby issues a notification prescribing the nano finance under supervision, which is a business similar to banking business and has characteristics as specified in this Notification, is a business that requires approval as follows:

Clause 1. Repeal

(1) The Ministry of Finance Notification Re: Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Nano Finance Under Supervision) dated 26 December 2014 (B.E. 2557).

(2) The Ministry of Finance Notification Re: Business Subject to Approval to Clause 5 of the Revolutionary Council Decree 58 (Nano Finance Under Supervision) (Version 2) dated 17 December 2015 (B.E. 2558).

Clause 2. In this Notification

“Nano finance” means lending, purchasing, discounting or rediscounting of bills or any negotiable instruments, hire purchase, and leasing to natural persons for the purpose of business undertaking without any asset or property pledged as collaterals.

“Nano finance under supervision” means nano finance for the purpose of business undertaking that has total credit line for each debtor not exceed 100,000 baht and credit term as agreed between debtors and operators. In this regard, operators shall have flexible credit granting process according to characteristics of debtor’s groups, e.g. start-up business.

However, nano finance under supervision shall exclude

(1) A loan originated from hire purchase, leasing, sale and lease back of goods that operators sell as usual business, as well as vehicles and any other assets as prescribed additionally by the Bank of Thailand

(2) Title loans

(3) Travel loans for overseas employment

(4) Other loans as prescribed by the Bank of Thailand

“Title loan” means loan to a person that holds legal rights to the vehicle whereby operators receive vehicle registration records or arrange to have a contract, a document, or any other evidence for transferring of vehicle registration in advance as debt guarantee. This includes arrangements to have a contract, a document, or any other evidence so that operators can proceed with selling or taking any other actions of debtors’ vehicle for debt repayment, whilst debtors may continue to keep and use the vehicle as normal owners.

“Vehicle” means Vehicle according to the law on vehicle land transport.

“Consumer” means consumers according to the law on consumer protection.

“Operator” means operators who usually conduct nano finance business under supervision.

“Financial institution” means

(1) Financial institutions according to the law on financial institutions businesses

(2) Government financial institutions established by special laws

“Person with management authorities” means

(1) Managers, deputy managers, executive directors of the operators, or any persons in equivalent positions under different titles

(2) Persons whom the operators have entered into contracts with to delegate their management authorities, in whole or in part

(3) Persons who have de facto power to control or to dominate managers, directors, or managements of the operators to follow their instructions in formulating policies or operating businesses

“Business group” means that have following characteristics:

(1) Business groups consist of the operator as a parent company and either one or many subsidiary companies, direct or indirect, including subsidiaries in every level; or

(2) Business groups consist of a non-operator as a parent company and the operator as a subsidiary company, in which the group may consist of one or many subsidiaries, direct or indirect, including subsidiaries in every level.

“Company” means limited companies, public limited companies, limited partnerships, registered ordinary partnerships, or other juristic persons.

“Parent Company” means companies that have controlling power over other companies.

“Controlling power” means the power to control other companies, either directly or indirectly, in the following manners:

(1) Holding more than 50 percent of total paid-up shares.

(2) Having power to control majority of voting rights at the companies’ shareholder meetings.

(3) Having power to control appointment or dismissal of persons with management authorities or directors, at least half of the total number of directors in the companies.

(4) Having power to control in any other manners as prescribed by the Bank of Thailand.

Holding 20 percent or more of a company’s total paid-up shares, either directly or indirectly, is preliminarily presumed to have controlling power unless can be proved.

“Subsidiary company” means

(1) Companies that have another company as parent company; or

(2) Subsidiary companies of the companies under (1) at all levels.

“Affiliated company” means subsidiary companies that have the same parent company.

“ Related person ” means persons who are related to other persons in the following manners:

(1) Spouses;

(2) Children or adopted children who are not yet reach legal age;

(3) Companies in which such person or persons under (1) or (2) have management authorities;

(4) Companies in which such person or persons under (1) or (2) have power to control majority of voting rights at the shareholders’ meetings;

(5) Companies in which such person or person under (1) or (2) has power to control the appointment or dismissal of directors;

(6) Subsidiary companies of the companies under (3), (4) or (5);

(7) Affiliated companies of the companies under (3), (4) or (5);

(8) Principals or agents; or

(9) Other persons with characteristics as prescribed by the Bank of Thailand.

In case of any persons hold 20 percent or more of a company's total paid-up shares, either directly or indirectly, it is preliminarily presumed that such company is related to such person unless can be proved otherwise.

“Major shareholder” means persons who hold or have the operators' shares, either directly or indirectly, more than 10 percent of the total paid-up shares, including shares held by related persons.

“Financial business and payment system” means

- (1) Financial institution business according to the law on financial institution business
- (2) Credit card business, personal loan business under supervision, nano finance business under supervision, provincial retail loan business under supervision (Pico Finance), and electronic system or network business for peer-to-peer lending, which are businesses required for permission according to the laws
- (3) Payment system business under supervision and payment service business under supervision according to the law on payment systems
- (4) Asset management business according to the law on asset management companies
- (5) Business related to means of foreign payment according to the law on foreign exchange control
- (6) Life insurance business according to the law on life insurance and non-life insurance business according to the law on non-life insurance
- (7) Securities business, financial advisory business, investment advisory business, and crowdfunding system service business according to the law on securities and exchanges
- (8) Derivatives business according to the law on derivatives
- (9) Trustee business according the law on trust for transactions in capital markets
- (10) Securitization business according to the law on special purpose juristic persons for securitization
- (11) Other businesses as prescribed by the Bank of Thailand

Chapter 1

Establishment and Applying for a License

Clause 3. The operation of nano finance business under supervision is the business that requires for permission.

The provisions of paragraph one shall not apply to:

(1) Financial institutions

(2) Operators providing credits similar to nano finance under supervision to consumers for payment of goods, services, and any others that belong to the operators themselves, the operators' own business group, or businesses under the same franchise

(3) Operators, that are not authorized to conduct nano finance business under supervision, which charge total maximum of interests, fines, service charges, and any fees not more than the allowed interest rate according to the Civil and Commercial Code

In case of the number of consumers, the amount of loans, or the scope of granting loans under paragraph two may have impacts on public interest or economic stability of the country, the Bank of Thailand, with agreement of the Minister, shall prescribe such loans to be nano finance under supervision which require for permission according to this Notification. Thus, the operators as specified and announced by the Bank of Thailand shall apply for approval to conduct the business according to this Notification. Indeed, the operators shall follow the rules and timeframe prescribed by the Bank of Thailand.

Clause 4. Operators shall be juristic persons in form of limited companies or public limited companies which receive licenses from the Minister. In such granting licenses, the Minister may prescribe any rules as deemed appropriate as well.

In applying for the licenses, the applications shall be submitted through the Bank of Thailand according to the requirements and forms as prescribed by the Bank of Thailand.

After receiving applications, together with properly completed required documents, the Bank of Thailand shall submit its opinion to the Minister for consideration of granting the licenses to conduct nano finance business under supervision within sixty working days from the date of receiving such applications, as well as properly completed required documents.

In case there are reasonable causes to doubt or any facts to believe that major shareholders, directors, or persons with management authorities of the applicants, as well as directors, managing partners, or persons with management authorities of their parents, have any prohibited characteristics according to Clause 14 (10) and Clause 14 (11), the Bank of Thailand can extend consideration period twice, for not more than sixty working days from such due date each time. Also, the Bank of Thailand shall report to the Minister for acknowledgment regarding such extended periods.

Clause 5. In applying for the licenses, juristic persons who intend to conduct nano finance business under supervision shall not have the prohibited characteristics as follows:

(1) Being under receivership.

(2) Being under order of temporarily suspension of their operations, either in whole or in part, or used to have their licenses or registration certificates to conduct financial businesses and payment systems revoked.

(3) Having been subjected to the court's final judgements of money laundering or having been subjected to the court's judgements or court's orders of forfeiture of assets to the state according to the law on anti-money laundering. Having been the persons listed on the List of Designated Persons related to terrorism or proliferation of weapons of mass destruction. Or having been subjected to the court's final judgements of offense related to financing of terrorism or proliferation of weapons of mass destruction according to the law on counter-terrorism and proliferation of weapon of mass destruction financing.

(4) Used to be operators of financial businesses and payment systems without authorized licenses or registration certificates as stipulated by laws. Having engaged in unfair activities or having taken advantages of consumers.

Clause 6. Operators shall have paid-up registered capitals no less than fifty million baht, as well as having shareholders' equities no less than the paid-up registered capitals at the date of submitting applications.

Chapter 2

Condition for Business Operation

Clause 7. Total maximum of interests, fines, service charges, and any fees that operators may charges must not more than thirty-six percent per year (Effective rate).

Clause 8. Operators must completely and clearly provide details of fees, interests, and any expenses occurred from nano finance under supervision in prospectus, applications, contracts, and any other documents according to the regulations prescribed by the Bank of Thailand.

Clause 9. Operators must keep confidentiality of consumers' information except for the following cases:

- (1) Disclosure with written consent from consumers
- (2) Disclosure according to duty, for the purpose of investigation, or for legal trials
- (3) Disclosure to auditors of such operators
- (4) Submission of credit information according to the law on credit information business
- (5) Disclosure for the purpose of complying to the laws
- (6) Disclosure for other purposes as authorized by the Bank of Thailand

Clause 10. Operators are prohibited to undertake activities as follows:

(1) Public borrowing except issuing bills to be sold to limited groups of investors (Private Placement: PP) and except issuing debentures according to the law on securities and exchange.

(2) Reducing capitals without permission from the Minister.

(3) Relocating head offices without permission from the Bank of Thailand.

(4) Transferring debts from nano finance under supervision to debts under current account contracts except having written consents from consumers.

In case of debts occurred from nano finance under supervision that have not yet been transferred to be debts under current account contracts, the operators may not calculate interest charges based on compounding amount of interests and principals.

(5) Ceasing or suspend of operation of nano finance business under supervision without permission from the Minister.

By applying for permission according to Clause 10 (2) or Clause 10 (5) of paragraph one, operators shall submit letters explaining the reasons through the Bank of Thailand. The Bank of Thailand shall consider and make recommendations to the Minister for consideration of granting approval within sixty working days from the date of receiving the applications and properly completed required documents.

Clause 11. The Bank of Thailand shall have the power to prescribe regulations for conducting nano finance business under supervision, including the followings:

(1) Qualifications of users for services of nano finance under supervision

(2) Business operations undertaken by operators

(3) Interests, fines, service charges, and any fees related to nano finance under supervision that operators may charge, of which the total maximum rate prescribed by the Bank of Thailand must not exceed the rate as specified in Clause 7

However, besides such mention in paragraph one as prescribed by the Bank of Thailand, the operators may reasonably charge expenses from consumers as actually paid.

(4) Management, retention, disclosure, or any actions related to information of nano finance under supervision, including personal information of consumers

(5) Investigation and maintain security related to nano finance under supervision, including systems for providing service of nano finance under supervision

(6) Management of services related to consumer protection, demand for debt payment, and follow up on debt collection payment

(7) Selling and transferring of debts

(8) Practices for handling complaints or disputes from consumers

(9) Accounting and reporting

(10) Policy formulation, work planning, and public relationship

(11) Using of services from external providers for operating businesses

(12) Disclosure of information related to misconduct of operators and their directors or their persons with management authorities

(13) Relocating of head offices, as well as opening, relocating, or closing of branch offices. In this regard, branch office has meaning as specified by the Bank of Thailand

(14) Any other issues that the Bank of Thailand deems necessary to regulate nano finance business under supervision

Clause 12. For purposes of consumer protection, the Bank of Thailand shall have power to prescribe rules for operators to comply with as follows:

(1) Other businesses that such operators may conduct

(2) Juristic acts or contracts with people or consumers in conducting businesses of operators as specified by the Bank of Thailand, in aspects of contents, methods for calculating benefits, or forms of contracts

(3) Requirements in case of juristic acts or contracts entitle operators to unilaterally change contractual terms

(4) Disclosure of information regarding the operators

Clause 13. For purposes of consumer protection, the Bank of Thailand shall have power to disclose information related to misconduct of operators and their directors or their persons with management authorities according to this Notification and the related notifications of the Bank of Thailand.

Clause 14. Major shareholders, directors, or persons with management authorities must not have any qualifications or prohibited characteristics as follows:

(1) Being bankrupts or used to be dishonest bankrupts.

(2) Used to be imprisoned by the court's final judgments on the offences of dishonest, regardless of whether on probation or not.

(3) Used to be imprisoned by the court's final judgments on the offences relating to counterfeiting and alteration according to the Criminal Code or the offences relating to computers according to the law on computer crimes.

(4) Used to be subjected to the court's final judgements of money laundering or used to be subjected to the court's judgements or orders of forfeiture of assets to the state according to the law on anti-money laundering. Used to be the persons listed on the List of Designated Persons related to terrorism or proliferation of weapons of mass destruction. Or used to be subjected to the court's final judgements of offense related to financing of terrorism or proliferation of weapons of mass destruction according to the law on counter-terrorism and proliferation of weapon of mass destruction financing.

(5) Used to be directors, managing partners, or persons with management authorities of the operators of financial businesses and payment systems which those persons involved or had responsibilities in revocation of business licenses or business registrations during the revocation periods.

(6) Used to be removed from the positions of directors or persons with management authorities of financial institutions according to the law on financial institution business, of securities companies according to the law on securities and exchange, of life insurance companies according to the law on life insurance, or of non-life insurance companies according to the law on non-life insurance, unless such removal is not associated with dishonest conduct of duty.

(7) Used to be punished by dismissal or discharge from government offices, government organizations, or government agencies on charges of dishonest conduct of duty.

(8) Used to be imprisoned by the court's final judgment on offences relating to conducting financial business and payment systems.

(9) Used to be subjected to denunciation, complaint, or being prosecuted by the Bank of Thailand, the Office of the Securities and Exchange Commission, the Office of Insurance Commission, or government agencies, both in the country and abroad, on the charges of fraudulent or dishonest conduct, unless being found not guilty in final judgment.

(10) Having causes to doubt that the persons have engaged in or used to conducted activities causing fraud or public cheating, as well as conducting dishonest or unfair consumer practices.

(11) Having causes to doubt that the persons have engaged in or used to conducted activities causing discrimination, seeking self-benefits for them or their groups, as well as

participating in making any decisions, which may cause conflict of interests, or that the persons have had behaviors implying actions which seem to be dishonest.

(12) Being persons who do not have any other qualification or prohibited characteristics as prescribe by the Bank of Thailand.

Clause 15. The parent companies of operators must have directors, managing partners, or persons with management authorities who do not have qualification or prohibited characteristics the same as directors and persons with management authorities of such operators.

Clause 16. In case of adding or changing major shareholders, directors, or persons with management authorities of operators, as well as directors, managing partners, or persons with management authorities of their parents, the operators shall notify the Bank of Thailand in documentation or via electronic methods as prescribed by the Bank of Thailand in the Public Handbook within fifteen working days from the date of such changing.

In case of changing their juristic person's names, the operators shall notify the Bank of Thailand in documentation or via electronic methods as prescribed by the Bank of Thailand in the Public Handbook in advance not less than seven working days prior to the beginning date of such changing. In addition, the operators shall inform in documentation, via electronic methods, or any other methods in advance not less than seven working days prior to the beginning date of such changing.

Clause 17. In case of

(1) Operators violate or negligence to comply with any conditions for business operation.

(2) Operators' financial positions or business operations may cause severe damages to public interest.

(3) Operators are the juristic persons who have prohibited characteristics as follows:

(a) Being under receivership or bankrupts.

(b) Used to have their licenses or registration certificates to conduct financial businesses and payment systems revoked.

(c) Having been subjected to the court's final judgements of money laundering or having been subjected to the court's judgements or court's orders of forfeiture of assets to the state according to the law on anti-money laundering. Having been the persons listed on the List of Designated Persons related to terrorism or proliferation of weapons of mass destruction. Or having been subjected to the court's final judgements of offense related to

financing of terrorism or proliferation of weapons of mass destruction according to the law on counter-terrorism and proliferation of weapon of mass destruction financing.

(d) Used to be operators of financial businesses and payment systems without authorized licenses or registration certificates as stipulated by laws. In addition, having engaged in unfair activities or having taken advantages of consumers.

(4) Major shareholders, directors, or persons with management authorities of operators, as well as directors, managing partners, or persons with management authorities of their parents, have prohibited characteristics as specified in Clause 14 or Clause 15 depending on the case.

The Bank of Thailand shall have the power to order such operators to correct the violation or the negligence, as well as to correct their financial positions or operations, within the specified time period. The Bank of Thailand shall report to the Minister for acknowledgement of such orders and the operating results according to the order without delay, that is, no later than thirty days from the date of the orders or knowing such operating results.

In case of operators fail to make correction within the time period as specified by the Bank of Thailand in paragraph one or in case of the Bank of Thailand deems necessarily urgent, the Bank of Thailand shall have the power to order the operators to temporarily cease operations, in full or in part, within the specified time period in order to make the correction. The Bank of Thailand shall report to the Minister for acknowledgement of such orders and operating results according to the order without delay, that is, no later than thirty days from the date of the orders or knowing of such operating results. In this case, the Bank of Thailand may prescribe rules, procedures, or any conditions for the operators to comply with, as well.

In case of the operators remain in violation by not complying with the Bank of Thailand's orders as prescribed in paragraph two, in case of the Bank of Thailand may not able to order the operators to take actions as specified in paragraph two, or in case of the operators do not have business transactions as authorized for two consecutive years, the Minister with recommendations from the Bank of Thailand may revoke their licenses of nano finance business under supervision. In this case, the Minister may prescribe rules, procedures, or any conditions for the operators to comply with, as well.

Clause 18. In case of operators want to terminate their nano finance business under supervision, such operators must receive approval from the Minister by submitting application through the Bank of Thailand.

Upon receiving the applications according to paragraph one, the Bank of Thailand shall consider to propose opinions to the Minister without delay, that is, no later than thirty days from the date of receiving such applications with properly completed required documents.

The Minister, with the recommendations of the Bank of Thailand, shall consider and may order the approval date for terminating businesses under any conditions and procedures. Indeed, the consideration shall be completed within thirty working days from the date of receiving recommendations from the Bank of Thailand according to paragraph two. In an exceptional case that there is necessity circumstance causing the consideration not to be completed within such time limit, the Minister shall notify the operators in written prior to the due date. In this case, the extension period for consideration shall not be more than thirty working days from such due date.

Clause 19. The Bank of Thailand shall have the power to appoint its staffs to be officers to perform duties according to the Declaration of the Revolutionary Council Decree 58 dated 26 January 1972 (B.E. 2515) and this Notification. In addition, the Bank of Thailand shall have the power to examine the business operations as specified in this Notification and to file lawsuits for breaching the Declaration of the Revolutionary Council No. 58 dated 26 January 1972 (B.E. 2515).

Clause 20. Upon the officers' requests, operators shall give testimony or provide account books, documents, and other evidence. Also, the operators shall have their major shareholders, directors, persons with management authorities, staffs, employees, or auditors, as well as their parent companies and their parent companies' directors, managing partners, or persons with management authorities, give testimony or provide account books, documents, and any other evidence with related to businesses of such operators as demanded by the officers.

Clause 21. In order to have effective supervision, the Bank of Thailand shall notify the Minister regarding the rules, procedures, and conditions as specified by the Bank of Thailand according to this Notification, as well as shall submit a copy of reports, which operators submitted to the Bank of Thailand, to the Ministry of Finance.

Transitional Provision

Clause 22. Any operators, who have already had licenses to conduct the business granted prior to the legal force date of this Notification, shall be authorized operators under this Notification.

Clause 23. In case that operators, who have licenses to conduct the business granted prior to the legal force date of this Notification according to Clause 22, as well as their major shareholders, directors, or persons with management authorities, together with their parent companies' directors, managing partners, or persons with management authorities, have prohibited characteristics as specified in this Notification, the operators shall make correction within one hundred and eighty days from the legal force date of this Notification.

In addition, the operators, who have licenses to conduct the business granted prior to the legal force date of this Notification according to Clause 22, shall inform the information regarding their major shareholders, directors, and persons with management authorities, as well as their parent companies' directors, managing partners, and persons with management authorities, as prescribed by the Bank of Thailand in the Public Handbook to the Bank of Thailand within sixty days from the legal force date of this Notification.

Clause 24. This Notification shall come into force as from the day following the publication date in the Government Gazette onwards.

Announced on 30th July 2020 (B.E. 2563)

Santi Promphat

Assistant Minister

Acting Minister of Finance