

Unofficial Translation

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

Please refer to the Thai text for the official version.

Ministry of Finance Notification

Re: Business Subject to Approval to Clause 5 of the Declaration of the Revolutionary Council
No. 58

(Electronic System or Network Business for Peer-to-Peer Lending)

By virtue of the power conferred by Clause 5, Clause 7, Clause 8 and Clause 14 of the Declaration of the Revolutionary Council No. 58 dated 26 January 1972 (B.E. 2515) regarding the supervision of trading business which has an impact on public safety and well-being, the Minister of Finance hereby issues a notification that regulates electronic system or network business for peer-to-peer lending, which is the business similar to acquiring of capital fund and lending such fund to other persons or using the acquired fund to purchase or discount bills or other negotiable financial instruments or credit instruments, that has characteristics as specified in this Notification, as the business that requires permission as follows:

Clause 1 The Notification of the Ministry of Finance Re: Business Subject to Approval to Clause 5 of the Declaration of the Revolutionary Council No. 58 (System or Electronic Network Business for Peer-to-Peer Lending Transaction) dated 10 September 2018 (B.E. 2561) shall be repealed.

Clause 2 In this Notification

“Electronic system or network” means website, application or any other electronic media of a similar nature used in supporting peer-to-peer lending transactions.

“Peer-to-peer lending” means credit financing between lenders and borrowers through an electronic system or network.

“Platform provider” means a provider of an electronic system or network for peer-to-peer lending as a normal trade.

“Financial Institution” means

- (1) a financial institution according to the law on financial institution business;
- (2) a specialized financial institution.

“Borrower” means a natural person who applies for credits through an electronic system or network.

“ Lender” means a natural person or a juristic person who offers a loan through an electronic system or network, excluding a crowdfunding system provider under the Notification of the Capital Market Supervisory Board Re: Offering of Securities for Sale through Crowdfunding System.

“ Consumer” means a consumer according to the law on consumer protection, including a borrower or a lender.

“Person with management authority” means

(1) a manager, deputy manager, executive director or any person holding an equivalent position under a different title;

(2) a person with whom the platform provider has entered into a contract to delegate its management authority, in whole or in part; or

(3) a person who has de facto power to control or dominate a manager, or director or management of the platform provider to comply with his/her instructions in policy formulation or business operation of the platform provider.

“ Company” means a limited company, a public limited company, limited partnership, registered ordinary partnership or any other juristic person.

“Parent Company” means a company that has controlling power over another company.

“Controlling power” means the power to control another company either directly or indirectly in the following manners:

(1) holding more than 50 percent of total paid-up shares;

(2) having the power to control a majority of voting rights at the company’s shareholder meeting;

(3) having the power to control the appointment or dismissal of persons with management authority or directors at least half of the total number of directors in the company; or

(4) having the power of control in the manner prescribed by the Bank of Thailand.

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

“Subsidiary company” means

(1) a company that has another company as parent company; or

(2) a subsidiary company of the company under (1) at all levels.

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

“Related person” means a person who is related to another person in the following manner:

- (1) spouse;
- (2) child or adopted child who is not yet reach adulthood;
- (3) company in which that person or person under (1) or (2) has management authority;
- (4) company in which that person or person under (1) or (2) has power to control a majority of voting rights at the shareholders' meeting;
- (5) company in which that person or person under (1) or (2) has power to control the appointment or dismissal of directors;
- (6) subsidiary company of the company under (3), (4) or (5);
- (7) affiliated company of the company under (3), (4) or (5);
- (8) principal or agent; or
- (9) other persons with characteristics as specified by the Bank of Thailand.

In case where a person holds 20 percent or more of a company's total paid-up shares, either directly or indirectly, it is presumed that such company is related to such person unless it can prove otherwise.

“Major shareholder” means a person who holds or has the platform provider's shares, either directly or indirectly, in excess of 10 percent of the total paid-up shares, inclusive of shares held by related persons.

“Financial business and payment systems” means

- (1) financial institution business according to the law on financial institution business;
- (2) credit card business, personal loan business under supervision, retail loan business for the occupation under supervision (Nano Finance), provincial retail credit business under supervision (Pico Finance) and electronic system or network business for peer-to-peer lending which require licenses according to the law;
- (3) payment systems business and payment services business according to the law on payment systems;
- (4) asset management business according to the law on asset management companies;
- (5) business related to foreign means of payment according to the exchange control regulations;

(6) life insurance business according to the life insurance law, and non-life insurance business according to the non-life insurance law;

(7) securities business, financial advisory business, investment advisory business and crowdfunding system business according to the law on securities and exchange;

(8) derivatives business according to the law on derivatives;

(9) trustee business according the law on trust for transactions in capital market;

(10) securitization business according to the law on special purpose juristic persons for securitization;

(11) other businesses as specified by the Bank of Thailand.

Chapter 1

Starting Business and Applying for a License

Clause 3 The operation of an electronic system or network business for peer-to-peer lending is the affair that requires permission.

The provisions of paragraph one shall not apply to financial institutions.

Clause 4 A platform provider shall be a juristic person in the form of a limited company or public limited company registered in Thailand that is not a financial institution, who receives a license from the Minister. In granting a license, the Minister may prescribe guidelines as deemed appropriate.

License application shall be submitted through the Bank of Thailand in accordance with guidelines and forms prescribed by the Bank of Thailand. Nevertheless, the Bank of Thailand may require applicants to participate in testing and developing innovation using new technologies to support financial services (Regulatory Sandbox) with the Bank of Thailand in accordance with the rules, procedures, and conditions prescribed by the Bank of Thailand before submitting opinions to the Minister.

After receiving a complete and correct application and required documents, the Bank of Thailand shall submit its opinion to the Minister to consider granting a license to operate an electronic system or network business for peer-to-peer lending within sixty working days from the date of receiving the complete and correct application and required documents.

In case there is a reasonable cause to believe or there appears any fact that a major shareholder, director or person with management authority of the applicant has any of the prohibited characteristics according to Clause 12 (2) (j) and Clause 12 (2) (k); or a director, managing partner or person with management authority of the applicant's parent company has any of those prohibited characteristics, the Bank of Thailand may extend consideration period twice, for sixty working days from the due date each time. The Bank of Thailand shall report to the Minister about such extended consideration periods.

Licenses granted for operating an electronic system or network business for peer-to-peer lending shall have a maximum validation period of five years from the date of approval.

License renewal shall be done by the platform provider by submitting a renewal application through the Bank of Thailand at least ninety working days before the current license expires.

Clause 5 A platform provider shall have paid-up registered capital and have shareholders' equity no less than five million baht throughout the business operating period, as well as having no less than seventy-five percent of total paid-up shares with voting rights held by Thai nationals.

Clause 6 To applying for a license, a juristic person who intends to operate an electronic system or network business for peer-to-peer lending shall not have the following prohibited characteristics:

(1) being under court-ordered receivership;

(2) being ordered to temporarily suspend its operations, either in whole or in part, or being the juristic person whose license or registration certificate to conduct financial business and payment systems has been revoked;

(3) having been subject to the court's final order of money laundering or asset seizure for public revenue according to the law on anti-money laundering, or having been listed on the List of Designated Persons related to terrorism or proliferation of weapon of mass destruction, or having been sentenced by the court's final judgment for an offence related to financing of terrorism or proliferation of weapon of mass destruction financing according to the law on counter-terrorism and proliferation of weapon of mass destruction financing;

(4) having had conducted a financial business and payment systems without an authorized license or registration certificate according to the law and engaged in business practices that are unfair or take advantage of consumers;

Chapter 2

Conditions for Business Operation

Clause 7 Platform providers shall

(1) clearly and fully disclose details about service charges, fees, and other expenses collected from service users related to the use of an electronic system or network for peer-to-peer lending on their electronic system or network, contract or related documents as specified by the Bank of Thailand;

(2) specify in the service contract that the interest rates of the lending contract shall not exceed the rate specified in the Civil and Commercial Code;

(3) keep confidentiality of information provided by lenders and borrowers except for the following cases:

- (a) disclosure with written consent from the lender or borrower, as the case may be;
- (b) disclosure in line of duty or to facilitate an investigation or legal proceeding;
- (c) disclosure to an auditor of the platform provider;
- (d) submitting credit information to the credit bureau according to the law on credit information business;
- (e) disclosure to facilitate compliance as stipulated by law;
- (f) disclosure for other benefits as authorized by the Bank of Thailand.

Clause 8 Platform providers are prohibited to undertake as follows:

(1) public borrowing or deposit-taking except issuing bills to be sold to limited group of investors (Private Placement: PP) and issuing debenture according to the law on securities and exchange;

(2) being a lender or borrower through their own or other platform providers' electronic system or network;

(3) capital reduction except receiving permission from the Minister;

(4) ceasing operation of the electronic system or network business for peer-to-peer lending except receiving permission from the Minister;

(5) conducting another business except receiving approval from the Bank of Thailand or relating to the provision of services through an electronic system or network for peer-to-peer lending as authorized by the Bank of Thailand; the Bank of Thailand may prescribe additional rules and conditions for those businesses.

To apply for approval under Clause 8 (3) or Clause 8 (4), the platform provider shall submit a letter explaining the reason for application and a business plan or supporting document specified by the Bank of Thailand. The Bank of Thailand shall consider and make a recommendation to the Minister to grant approval within sixty working days from the date of receiving the complete and correct application and required documents.

Clause 9 The Bank of Thailand shall have the power to prescribe guidelines for operating an electronic system or network business for peer-to-peer lending, including the following rules:

- (1) qualifications of lenders and borrowers;
- (2) business activities undertaken by a platform provider;
- (3) service charges, fines and fees related to an electronic system or network business for peer-to-peer lending and other businesses relating to peer-to-peer lending through an electronic system or network;
- (4) verification and security related to the electronic system or network for peer-to-peer lending;
- (5) practices for handling lender-related and borrower-related information ;
- (6) practices for handling complaints;
- (7) accounting and reporting;
- (8) policies, work plans, public relations, and advertising and sales promotions;
- (9) outsourcing;
- (10) disclosure of a platform provider's, director's, or person with management authority's misconduct;
- (11) opening, relocating or closing down of head office or contact address;
- (12) temporary suspension or termination of business operation;
- (13) application for approval of termination of business or other matters that the Bank of Thailand deems necessary in order to supervise the electronic system or network business for peer-to-peer lending.

Nevertheless, in case of necessity, the Bank of Thailand shall have the power to ease the rules under paragraph one for platform providers on case by case basis.

Clause 10 For the purpose of consumer protection, the Bank of Thailand shall have the power to prescribe the following practice guidelines for a platform provider:

- (1) other businesses that a platform provider is allowed to operate;
- (2) market conduct, notice for debt repayment and debt collection;

(3) juristic acts and contracts between a platform provider and an individual or a consumer as specified by the Bank of Thailand in the aspects of contents, methods used to calculate benefits or contract forms;

(4) requirements in case juristic acts or contracts entitle platform providers to unilaterally change the terms;

(5) disclosure of information about platform providers.

Clause 11 For the purpose of consumer protection, the Bank of Thailand shall have the power to disclose information about platform providers and directors or persons with management authority who are involved in commission of an offense under this Notification and all relevant notifications prescribed by the Bank of Thailand.

Clause 12 Directors or persons with management authority shall have full qualifications and shall not have any of the prohibited characteristics as follows:

(1) Qualifications in terms of competence, capability and experience

Directors or persons with management authority shall have competence, capability and experience as deemed necessary and suitable for their positions, and do not have or had performed work which indicated lack of professional standards.

(2) Prohibited characteristics in terms of honesty, integrity and reputation

(a) being a bankrupt or having been a dishonest bankrupt;

(b) having been imprisoned by the court's final judgment on the offences of theft, snatching, extortion, blackmail, robbery, gang-robbery, cheating fraud, cheating against creditors, criminal misappropriation or receiving of stolen property, regardless of whether the sentence has been suspended;

(c) having been imprisoned by the court's final judgment on the offences relating to counterfeit and alteration according to the Criminal Code or the offences relating to computers according to the law on computer-related crimes;

(d) having been sentenced by the court's final judgment on an offence of money laundering, or having been subject to the court's judgment or order of asset seizure for public revenue according to the law on anti-money laundering, or having been listed on the List of Designated Persons related to terrorism or proliferation of weapon of mass destruction, or having been sentenced by the court's final judgment for an offence related to financing of terrorism or proliferation of weapon of mass destruction financing according to the law on counter-terrorism and proliferation of weapon of mass destruction financing;

(e) having been a director, managing partner or person with management authority in financial business and payment systems at the time its license or registration certificate systems was revoked and that person was involved in or responsible for such revocation;

(f) having been removed from the position of a director or person with management authority of a financial institution according to the law on financial institution business, or having been removed from the position of a director or person with management authority of a securities company according to the law on securities and exchange, or having been removed from the position of a director or person with management authority of a life or non-life insurance company according to the law on life insurance and non-life insurance, unless such removal is not associated with dishonest conduct;

(g) having been dismissed or discharged from government service, state organization or agency on a charge of malfeasance in office;

(h) having been imprisoned by the court's final judgment on an offence relating to the operation of financial business and payment systems;

(i) having been accused or subject to a complaint, or having been prosecuted, by the Bank of Thailand or the Office of the Securities and Exchange Commission or Office of Insurance Commission or any government agency in the country or abroad, on the charge of a fraudulent or dishonest act, with the exception that the case is final and the person was found not guilty;

(j) there is a reasonable doubt that the person has engaged or is engaging in a business that is deceptive to others or to the public, or dishonest or unfair treatment against consumers;

(k) there is a reasonable doubt that the person has engaged or is engaging in an act of discrimination or stirring up discrimination, seeking personal benefits or benefits for his or her group or participating in any decision-making which may create a conflict of interest; or there is a reasonable doubt about dishonest or fraudulent work behavior;

(l) being a disqualified person or being a person having a prohibited characteristic as specified by the Bank of Thailand.

(3) Prohibited characteristics in terms of financial soundness

A director or person with management authority of platform providers shall not have any difficulty in making principal repayment or interest payment to a financial institution or a credit company.

Clause 13 A major shareholder of the platform provider shall not have any of the prohibited characteristics according to Clause 12 (2) in this Notification.

Clause 14 The platform provider's parent company shall have directors, managing partners or persons with management authority that do not have prohibited characteristics in terms of honesty, integrity and reputation according to Clause 12 (2) which are the same as those qualifications set for directors or persons with management authority of platform providers.

Clause 15 In case there is a change of shareholders, directors or persons with management authority of the platform provider, or there is a change of directors, managing partners or persons with management authority of the platform provider's parent company, the platform provider shall notify the change to the Bank of Thailand in writing or through an electronic channel as specified in Public Handbook within fifteen working days from the date of the change.

In case there is a change of juristic person's name, platform providers shall notify the Bank of Thailand in writing or through an electronic channel as specified in Public Handbook at least seven days in advance, and shall also notify the change to consumers at least seven days in advance in writing or through an electronic channel or any other channels that can reach the consumers.

Clause 16 Where it appears that

(1) the platform provider violates or fails to comply with any of the rules or conditions set for operating the business;

(2) the platform provider's financial position or operating performance may create a serious damage to the public interest;

(3) the platform provider has the following prohibited characteristics:

(a) being under court-ordered receivership or being a bankrupt;

(b) having had the license or registration certificate to conduct financial business and payment systems revoked;

(c) having been sentenced by the court's final judgment of an offence of money laundering, or having been subject to the court's judgment or order of asset seizure for public revenue according to the law on anti-money laundering, or having been listed on the List of Designated Persons related to terrorism or proliferation of weapon of mass destruction, or having been sentenced by the court's final judgment for an offence related to financing of terrorism or proliferation of weapon of mass destruction financing according to the law on counter-terrorism and proliferation of weapon of mass destruction financing; or

(d) having had conducted financial business and payment systems without an authorized license or registration certificate according to the law and engaged in business practices that are unfair or take advantage of consumers;

(4) the platform provider's director or person with management authority is disqualified or has a prohibited characteristic according to Clause 12;

(5) the platform provider's major shareholder has a prohibited characteristic according to Clause 13;

(6) the director, managing manager or person with management authority of the platform provider's parent company has a prohibited characteristic according to Clause 14,

the Bank of Thailand shall have the power to order the platform provider to rectify such violation or non-compliance or rectify the financial position or operating performance within the time limit specified and report to the Minister about such order and its result without delay which shall not be later than thirty days from the date of order or result perceiving.

If no correction has been done within the period prescribed by the Bank of Thailand under paragraph one, or in case the Bank of Thailand deems it necessary and urgent, the Bank of Thailand shall have the power to order the platform provider to terminate all or some of its operation temporarily to make corrections within the time limit specified and report to the Minister about such order and its result without delay which shall not be no later than thirty days from the date of order or result perceiving. In such case, the Bank of Thailand may prescribe additional rules, procedures or conditions for the platform provider to comply with.

If the platform provider is still in violation by not complying with the Bank of Thailand's order under paragraph two, or in case the Bank of Thailand fails to issue the order under paragraph two, or the authorized electronic system or network service for peer-to-peer lending has discontinued for more than two consecutive years, the Minister, with the advice of the Bank of Thailand, shall have the power to revoke the license to operate the electronic system or network business for peer-to-peer lending which has been granted. In such case, the Minister may prescribe additional rules, procedures or conditions for the platform provider to comply with.

Clause 17 In case that the platform provider wishes to cease the electronic system or network business for peer-to-peer lending, such person shall seek approval from the Minister by submitted an application through the Bank of Thailand.

After receiving the application according to paragraph one, the Bank of Thailand shall consider and make an advice to the Minister without delay which shall not be later than thirty working days from the date of receiving the complete and correct application and required documents.

The Minister, with the advice of the Bank of Thailand, may consider and order the timing of approval to cease operation and specified certain conditions and procedures. The consideration shall be completed within thirty working days from the date of receiving advice from the Bank of Thailand under paragraph two. In case of necessity that prevents the consideration from being completed within the time limit, the Minister shall issue a letter to notify the extension of consideration period to the platform provider prior to the due date. The extended consideration period shall not be more than thirty working days from the prior due date.

Clause 18 The Bank of Thailand shall have the power to appoint Bank of Thailand's employee to be an officer to act in accordance with the Declaration of the Revolutionary Council No. 58 dated 26 January 1972 (B.E. 2515) and this Notification, including the power to examine the operation of the business as specified in this Notification and proceed the legal proceedings in accordance with the Declaration of the Revolutionary Council No. 58 dated 26 January 1972 (B.E. 2515).

Clause 19 Upon the officer's request, the platform provider shall testify or deliver the actual book of accounts and other supporting documents related to the business of the platform provider as requested. Also, platform provider shall provide that major shareholders, directors, persons with management authority, employees, staff or platform provider's auditor or platform provider's parent company or managing partner or persons with management authority of the parent company shall testify or deliver the actual book of accounts and other supporting documents related to the business of the platform provider as requested

Clause 20 In order to provide an effective supervision, the Bank of Thailand shall notify the rules, procedures and conditions specified in this Notification to the Minister and send a copy of the paper which has been reported to the Bank of Thailand by the platform provider to the Ministry of Finance.

Transitional Provision

Clause 21 Any platform provider who has received a license to operate the business prior to the effective date of this Notification shall be deemed to be an authorized platform provider under this Notification.

Clause 22 In case that platform provider who has received a license to operate the business prior to the effective date of this Notification according to Clause 21 has a prohibited characteristic as specified in this Notification, or any of the platform provider's major shareholders, directors or persons with management authority or any of the directors, managing partners or persons with management authority of the platform provider's parent company lacks qualifications or has a prohibited characteristic, the platform provider shall make rectification within one hundred and eighty days from the effective date of this Notification.

In addition, the platform provider who has received a license to operate the business prior to the effective date of this Notification according to Clause 21 shall notify the information of the platform provider's major shareholders, directors and persons with management authority and the directors, managing partners and persons with management authority of the platform provider's parent company as specified in Public Handbook within sixty days from the effective date of this Notification.

Clause 23 This Notification shall come into force as from the day following the date of its publication in the Government Gazette.

Announced on 30th July 2020

(Mr. Santi Promphat)
Deputy Minister of Finance
Acting Minister of Finance