

Unofficial Translation

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**Notification of the Bank of Thailand**

**No. FPG. 1/2551**

**Re: Permission for Commercial Banks to Conduct  
Hire Purchase and Leasing Businesses**

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**1. Rationale**

In the past, loan demands of consumers do not entail only loans for business operations or consumption (loan credit), but also arise from loans for asset purchase (sales credit) through hire purchase or leasing schemes offered by financial institutions. Hence, to support commercial banks to further expand financial services and become a source of fund for those who desire to purchase an asset but lack sufficient fund to do so, the Bank of Thailand has thereby permitted commercial banks to conduct hire purchase and leasing businesses including sale and lease back since September 2004. Since then, the scope of commercial bank's business operations has been broadened gradually as follows:

(1) The permission for commercial banks to conduct hire purchase and leasing businesses with sale and lease back condition stipulated that the seller and lease back party must be a juristic person and the leased asset must not be a passenger car with carrying capacity of no more than seven passengers, a passenger car with carrying capacity ranging from 7-12 passengers, or a pickup truck weighing no more than 1,600 kilograms which is not used in for-hired cargo transport in accordance with the laws governing land transportation. The rationale for limiting the scope of sale and lease back business at that time arose from concerns over burgeoning household debts. Moreover, commercial banks were applying a flat annual interest rate rendering the lessees to be unaware of the effective interest rate.

(2) The scope of sale and lease back business was extended since March 2008 to allow commercial banks to serve individual customers without any restriction on types of assets. The expanded scope was deemed to increase alternatives for the public to use their own assets as collateral to raise funds legitimately (asset-based financing). Under this scheme, interest burdens are less costly than those of personal credit. Commercial banks are also required to publish the applicable effective interest rates for the lessee's information. Furthermore, since hire purchase and leasing transactions are

credit-like, commercial banks should similarly administer suitable risk management as they would in granting credit.

The issuance of this Notification mandates pertinent statutory power in conjunction with the Financial Institution Business Act B.E. 2551 (2008). Hence, commercial banks that have been approved to conduct the business may continue to do so without having to re-apply for a new license.

## **2. Statutory power**

By virtue of Section 36 of the Financial Institution Business Act B.E. 2551, the Bank of Thailand thereby permits commercial banks to conduct hire purchase and leasing businesses in accordance with the provisions of this Notification.

## **3. Scope of application**

This Notification shall apply to all commercial banks in accordance with the laws governing financial institutions.

## **4. Repealed notification and circular**

The Bank of Thailand Notification No. FPG. 1/2551 Re: Permission for Commercial Banks to Conduct Hire Purchase and Leasing Businesses, dated 7 March 2008 (Circular No. RPD (21) C. 47/2551, dated 25 March 2008)

## **5. Contents**

### **5.1 In this Notification,**

“Asset” means movable asset according to Civil and Commercial Code catered by commercial bank under hire purchase or leasing schemes.

“Leasing” means renting an asset under a financial lease contract where a commercial bank procures an asset according to the lessee’s bidding from a producer, distributor, or other party or an asset repossessed from another lessee, in order to allow the lessee to utilize such asset. The lessee is obligated to maintain and repair the leased asset. However, the lessee cannot terminate the contract unilaterally before maturity. Upon the expiration of the contract, the right to purchase the leased asset is subjected to an agreement between the commercial bank and lessee.

“Hire purchase” means hire purchase according to the Civil and Commercial Code.

“Cash price” means cash price of leased asset purchased or sold in the market on the execution date of contract.

“Investment amount” means a sum of cash price and expenses paid by a commercial bank to acquire an asset, e.g. transportation, taxes and duties, insurance premium, etc. The investment amount will diminish corresponding to installment amount paid by the lessee per the lease contract.

“Installment payment” means an amount of money paid by a lessee to a commercial bank in each installment which comprises principal and interest or yield of hire purchase.

“Advanced payment” means a lump sum of money paid up front by a lessee when a contract is executed, as a part of contractual payment.

“Lease contract” means a hire purchase contract or a leasing contract.

“Lessor” means a person who grants a lease under hire purchase or leasing schemes.

“Lessee” means a person renting something under hire purchase or leasing schemes.

## 5.2 Principles

5.2.1 The Bank of Thailand permits commercial banks to conduct hire purchase and leasing businesses which are credit-like transactions.

However, hire purchase and leasing operations shall not be intended to circumvent laws or other rules, or to use as guise for accounting manipulation. For instance, an asset owner sells an asset to a commercial bank and later leases back the asset from the bank (sale and lease back). In this case, the bank appraises the asset at a higher value to benefit the lessee. Conversely, a bank owns the asset and performs sale and lease back by selling the asset to other lessee at a higher price compared to its actual price in order to gain book profit, or by inappropriate appraisal of the asset’s price, etc.

5.2.2 The Bank of Thailand’s focus is to ensure that commercial banks manage their own risks. To do so, commercial banks must have good insights into the nature of transactions, assets under hire purchase and leasing, and associated risks. Moreover, commercial banks must establish policies and procedures applicable to such businesses and be equipped with operational systems, risk management system, and internal control system which complement such business operations.

5.2.3 Hire purchase and leasing businesses face risks similar to typical lending. Therefore, commercial banks shall be observant of risk management and credit quality, for example, running proper credit approval process that primarily focuses on debtor's income, analysis of debt repayment ability, and valuation of hire purchase or leased assets which are subjected to reliable guidelines, etc. At the same time, commercial banks should not focus only on increasing credit volume. A commercial bank intending to conduct such businesses shall be well prepared in terms of the number and quality of personnel and various work systems, namely risk management system, credit analysis, and analysis of assets under hire purchase and leasing, debt collection and tracking, and forced sale of assets under hire purchase and leasing as well as data storage and processing.

### 5.3 Guidelines for business operations

Commercial banks engaging in hire purchase and leasing businesses must have the qualifications and comply with the provisions as follows:

5.3.1 Having good financial standing and performance, capable of full provisioning and capable of maintaining a capital adequacy ratio above the criteria prescribed by the Bank of Thailand as well as maintaining other financial ratios as prescribed by the Bank of Thailand on an ad hoc basis.

5.3.2 Cooperating with authorities in the implementation of the financial institution system development plan regarding revised roles and forms of financial institutions. To this effect, a commercial bank which takes deposits from the public by more than one site/form under the same business group must prepare a plan for merger, amalgamation, sale of business, relinquishing license, and accepting assets and liabilities transferred from other financial institutions in accordance with the One Presence policy prescribed by the Bank of Thailand.

5.3.3 Devising a business plan in writing for hire purchase and leasing businesses endorsed by the bank's board of directors to be used as guidelines and for the Bank of Thailand's examination. The business plan must contain at least the following particulars:

- (1) Policy and procedures for business operations;
- (2) Detailed description of management system, risk management system, internal control system, and accounting system as well as readiness and quality of personnel;

(3) Detailed description of risk management system must at least encompass the followings:

- Credit analysis system to develop systematic processes for determination of customer's credit line and advance payment, in particular, analysis of debt servicing capability which primarily focuses on customer's income, and analysis of quality and liquidity of assets under hire purchase and leasing.

- Stipulation of types of assets for hire purchase and leasing, and maximum investment for each type of assets as well as for all types of assets, based on various risk factors such as secondary market for sale of assets, outdated assets, etc.

- Management of assets under hire purchase and leasing including asset procurement, repossession process, monitoring and examination of asset conditions, asset valuation, and appraisal of scrap value. There must be effective processes for these functions. For asset valuation, commercial banks are able to employ either independent or internal appraisers. In this regard, commercial banks must comply with code of conduct and standard practices which are generally accepted in asset valuation profession.

- Debt collection and tracking system able to alert commercial banks when debtors begin to have trouble servicing or unable to service debt as agreed, as well as debt collection tactics for various circumstances. In this regard, commercial banks must comply with the guidelines of debt collection prescribed by the Bank of Thailand.

- Data storage, report preparation, and management information system for prescription and review of policies and business plans of hire purchase and leasing businesses.

5.3.4 Commercial banks intending to conduct hire purchase and leasing businesses must submit a letter of intent approved by the board of directors to the Bank of Thailand. The commercial bank subjected to compliance with the One Presence policy of the Financial Sector Master Plan must provide an assurance in the letter of intent that it shall undertake a plan for merger, amalgamation, sale of business, relinquishing license, and acceptance of assets and liabilities transferred from other financial institutions in order to comply with the One Presence policy endorsed by the Minister of Finance and other relevant conditions prescribed by the Minister of Finance.

In this regard, commercial banks shall submit the letter of intent to the Financial Institutions Supervision Group of the Bank of Thailand. After filing the letter of intent, the permission shall be effective after 30 days, unless the Bank of Thailand has any objection or request for additional written explanation. In such a case, it shall be deemed the commercial bank obtains a permission after being notified of the approval by the Bank of Thailand.

#### 5.3.5 Hire purchase and leasing contracts

Commercial banks must execute written hire purchase contract or leasing contract with the lessee at least in 2 duplicates. One copy shall be given to the lessee as evidence. Such contract shall contain particulars relevant to each type of lease contract as follows:

- (1) Type, description, and service life of the asset;
- (2) Cash price, investment, advance payment, installment amount, and interest rate applicable for calculation of returns;
- (3) Relevant details and method used for calculate returns and installment amount, if commercial banks use a flat annual interest rate to calculate returns, the effective interest rate must be specified;
- (4) Lease period;
- (5) Delivery method, inspection, securing or installing, relocation, loss, damage, impairment, maintenance, and utilization of the asset;
- (6) Insurance, receipt of claims pertaining to an insurance contract, guarantee;
- (7) Conditions and rights of the lessee for settlement of outstanding lease amount remained in the contract before maturity (if any);
- (8) Expenses and penalties under various circumstances;
- (9) Conditions for termination of the contract, expiration of the contract, repossession of the asset under hire purchase and leasing;
- (10) Conditions for title transfer to the lessee;
- (11) Conditions for renewal of the lease contract or purchase of the asset wholly or partly based on an agreed price.

Upon the expiration of the lease contract and the lessee, having been adhering to the conditions prescribed for acquisition of the title of asset in full, exercises its right to purchase the asset, commercial bank must proceed as deemed necessary and without delay to enable the lessee to take a full possession of the asset, such as registration of changed title holder, etc.

Moreover, since the hire purchase of automobile, motorcycle, and electrical appliance is a business which contract is regulated in accordance with the Notification of the Contract Committee Re: Classification of Automobile and Motorcycle Hire Purchase Enterprises as a Business which Contract is Regulated B.E. 2543 (2000) and the Notification of the Contract Committee Re: Classification of Electrical Appliance Hire Purchase Enterprises as a Business which Contract is Regulated B.E. 2544 (2001), when engaging in hire purchase of an automobile, motorcycle and electrical appliance, commercial banks must prepare hire purchase contracts in accordance with such notifications and guidelines prescribed by the Contract Committee.

5.3.6 Publishing schedule of interest rates used in calculation of returns, penalties, service fees, expenses, and other fees

(1) Commercial banks must post a schedule of interest rates used in calculation of returns, penalties, service fees, expenses, and other fees applicable to hire purchase and leasing in a public area at all branches on the same day on which such particulars are announced or revised by the commercial bank. In addition, the schedule must be published on the commercial bank's website before the effective date. If flat annual interest rates are used in calculation of returns, commercial banks shall also disclose the effective interest rates.

(2) Commercial bank, intending to revise provisions, fee schedule, expenses, penalties, calculation method, and other conditions as stated in a contract, shall comply with the Notification of the Bank of Thailand Re: Guidelines on Interest Rate, Discount, and Penalties for Commercial Bank.

5.3.7 Supervision

(1) Commercial banks must stress the mitigation of exposure to risk of assets under hire purchase or leasing being damaged and ensure that the assets are properly insured in a manner whereby the commercial bank is the beneficiary. Moreover, commercial banks must also consider types of assets, investment in the assets, likelihood of damage, and repair cost in the event of damage, etc.

(2) When calculating a maximum amount of investment that a commercial bank, except retail bank, can invest in assets under hire purchase or leasing to any single entity, it is to include credit, investment, contingent liabilities or other credit-like transactions granted to a single party or multiple parties involving in a single project or utilizing for the same purpose. At the end of a day, an aggregate of such transactions shall not exceed 25% of the commercial bank's capital fund.

Furthermore, when calculating a maximum amount of investment that retail bank can invest in assets under hire purchase and leasing to any single party, such retail bank shall include the amount of transactions arising from lending, investment, contingent liabilities, or other credit-like translations granted to a single party or a project. At the end of a day, an aggregate of such transactions shall not exceed the allowable limit of a retail bank as prescribed by the Notification of the Bank of Thailand Re: Determination of a Ratio of the Amount of Transactions Arising from Lending, Investment, Contingent Liabilities, or Other Credit-like Translations Granted by Financial Institution to Any Single Party or Project to Capital Fund.

(3) In calculation of risk weight of debtor under lease contract in order to maintain capital adequacy ratio, debtor classification, and provisioning as well as suspension of recognition of accrued interest income from hire purchase and leasing revenue, commercial banks shall comply with the guidelines prescribed by the Bank of Thailand.

(4) In the event that an asset is returned upon the expiration of a lease contract or due to repossession, commercial banks shall proceed to dispose or lease such asset within 6 months from the expiration date or the date of repossession. Beyond such period, if a commercial bank is still unable to dispose or lease the asset, it shall periodically set provision for such asset every six months at no less than 25% of the asset's value as of the expiration date of the contract or the date of repossession.

Where repossessed asset is considered an asset classified as loss or asset classified as doubtful of loss in accordance with the Notification of the Bank of Thailand Re: Guidelines for Classification and Reserve Provision of Financial Institutions, commercial banks shall promptly write off such asset from the accounting or set full provisioning in compliance with such notification. However, whereas such asset is considered an asset classified as doubtful of loss, the commercial bank shall set a higher amount of provision in comparison to the provision gradually set by the method stated in Paragraph 1 for asset classified as doubtful of loss in accordance with such notification.



Where repossessed asset's remaining service life is less than 2 years and the commercial bank is unable to dispose, or lease it within 6 months from the expiration date or the date of repossession, it shall set a provision for the full value of the asset promptly upon the end of the 6-month period from the expiration date of lease contract or the date of repossession.

#### 5.3.8 Accounting practice and reporting

(1) Commercial banks must ensure of strict compliance with the accounting standards and relevant laws or guidelines.

(2) Commercial banks must provide information and documentary evidence relevant to hire purchase and leasing businesses to the Bank of Thailand examination at any time.

#### 5.3.9 Commercial banks are prohibited to undertake the following:

(1) Procuring an asset of which lease contract has not been executed with any party or procuring an asset of which price is higher than the market price or higher than the lowest possible price;

(2) Committing a leased asset in a juristic act with any party, entailing an obligation upon such asset, unless approved by the Bank of Thailand where the Bank of Thailand may stipulate any condition as deemed appropriate;

(3) Allowing the lessee to sub-lease the asset to another party, except where the lessee is in the business of subleasing assets as its normal course of business.

#### 5.3.10 Sale and lease back

(1) Commercial banks must comply with the aforesaid guidelines applicable to hire purchase and leasing businesses;

(2) In sale and lease back, commercial banks must conduct appraisal of asset to be purchased and leased back as follows:

(a) Commercial banks must conduct appraisal of asset to be purchased and leased back in accordance with the guidelines set forth by the commercial bank's board of directors or a management committee assigned to perform the duty by the board of directors. However, commercial banks must properly appraise the asset value in order to prevent accounting manipulation or partiality in favor of seller and lease back party.

(b) Where a commercial bank is inexperienced or such asset does not have any appraised value in a secondary market for reference purpose, e.g. machinery, airplane, ship, etc., it should commission an external independent appraiser to conduct appraisal of the asset to be purchased or leased back in order to prevent partiality in favor of seller and lease-back party in accounting manipulation, such as buying asset at an unrealistically higher price.

#### 5.3.11 Suspension or revocation of license

The Bank of Thailand has the authority to suspend or revoke hire purchase and leasing business license under the following conditions:

(1) Upon the commercial bank violating or failing to comply with the above guidelines or provisions.

(2) Upon the commercial bank failing to pursue the plan for merger, amalgamation, sale of business, relinquishing license, and acceptance of assets and liabilities transferred from other financial institutions in order to comply with the one form of One Presence policy endorsed by the Minister of Finance.

(3) Upon the commercial bank failing to adhere to the conditions set forth by the Minister of Finance in approving the plan for merger, amalgamation, sale of business, relinquishing license, and acceptance of assets and liabilities transferred from other financial institutions in order to comply with the One Presence policy.

(4) Other circumstances which may have repercussions on public safety or contentment as considered by the Bank of Thailand.

## 6. Effective date

This Notification shall come into force following the announcement date in the Government Gazette.

Announced on 3<sup>rd</sup> August 2008

(Mrs. Tarisa Watanagase)  
Governor  
Bank of Thailand