

Unofficial Translation

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Notification of Bank of Thailand

No. FPG. 7/2561

Re: Regulations on Investment of Financial Institutions

1. Rationale

The Bank of Thailand has prescribed regulations on investment of financial institutions in order to prevent financial institutions to have significant interests in non-financial or supporting business which had been gradually amended to be in line with constantly changing environment. The example of the amendments includes the amended regulations on the holding or owning of trust certificates of private equity trust funds that venture into (1) SMEs; (2) FinTech firms; and (3) Venture capital firms that are neither subsidiaries in the financial business group nor other types of private equity business venturing into FinTech firms. The objective of this is to promote the access to finance for SMEs, which play important roles as the engine for economic growth, as well as FinTech firms, which take important part in promoting financial innovations.

Recently, many financial institutions intend to expand their business abroad, but there may be the restrictions due to the laws in certain countries that refrain the foreign investors from making investments with control in those local financial institutions, or there may be the restrictions on the shares' holding due to business negotiations. Therefore, in enabling Thai financial institutions to expand their business abroad, which will benefit their overall business activities, and to prepare for the ASEAN Economics Community (AEC), the Bank of Thailand hereby amends the regulations on investment of financial institutions, where a particular financial institution may seek approval, on a case-by-case basis, to hold or own shares of an overseas financial institution greater than the specified limit for the holding or owning of shares of a particular company (Individual limit). In giving approval, the Bank of Thailand will take into consideration the restrictions in the country that the financial institution intends to make investments that refrain investment by foreign investors with control over the domestic financial institutions or the restrictions in business negotiations. However, such holding or owning of shares must not be greater than the specified limit for the holding or owning of

shares in all companies (Aggregated limit) and the specified limit for the holding or owning of shares, investment units and trust certificates of the financial institution.

2. Statutory Power

By virtue of Section 30, Section 33 and Section 34 of the Financial Institution Business Act B.E.2551 (2008), the Bank of Thailand hereby issued the regulations and methods on investment of financial institutions as specified herein.

3. Repealed/Amended Notification and Circulars

The Bank of Thailand Notification No. FPG. 14/2559 Re: Regulations and Methods on Investment of Financial Institutions dated 13 September 2017

4. Scope of Application

This Notification shall apply to all financial institutions according to the law on financial institution business.

5. Content

5.1 Definitions

“securities” means the securities as prescribed under the Securities and Exchange Act, both listed and non-listed, as well as overseas securities with similar features as securities under Securities and Exchange Act

“shares” means common stocks and preferred stocks.

“investment units” means the investment units as prescribed under the Securities and Exchange Act.

“fixed income fund” means a mutual fund with investment policy to invest in or hold deposits, debt securities, or other securities or assets, or seeks to generate profits by any other means as prescribed by the Office of the Securities and Exchange Commission.

“other mutual fund” means a mutual fund that, with investment policy to invest in or hold other securities or assets, or seeks to generate profits by any other means beside investment in fixed income funds as prescribed by the Office of the Securities and Exchange Commission.

“trust fund” means a fund that consists of assets stipulated under a trust agreement and shall include assets, earnings, debts and liabilities arising from management of trust according to the trust agreement or according to the regulations as prescribed under the law on trust for transactions in capital markets.

“trust certificate” means a trust certificate and instrument issued under the trust for transactions in capital markets, which may be entitled otherwise, as prescribed under law on securities and exchange. This includes only a trust certificate and instrument with similar features as an investment unit.

“capital funds” means the total capital of a financial institution according to the Bank of Thailand Notifications Re: Components of capital for Locally-Incorporated Banks, Foreign Bank Branches, Finance Companies or Credit Foncier Companies, as the case may be.

“venture capital firm” shall be as defined according to the Bank of Thailand Notification Re: Supervision of Business Structure and Scope of Business of Financial Business Groups.

“Financial Technology: Fintech” means a business that utilizes new technology or innovation by applying in products or services of financial business or business supporting services.

“private equity trust” means a private equity trust fund established according to the law on trust for transactions in capital markets.

“related parties” shall be **those as specified in the Financial Institution Business Act B.E. 2551 (2008)**

“overseas financial institution” means **overseas companies that operate financial business comparable to those as specified in the Financial Institution Business Act B.E. 2551 (2008).**

5.2 Regulations

5.2.1 Holding or having shares, investment units or trust certificates

Financial institutions shall include shares, investment units or trust certificates held by both financial institutions themselves and their related parties. In case of foreign bank branches, investment units or trust certificates that are registered in Thailand which are held by head office or other branches as well as related parties of the head office and other branches, but only for shares, investment units or trust certificates shall be included.

5.2.2 Shares holding or owning of financial institutions

In holding or owning shares of any company, financial institutions must comply with the following regulations.

(1) Limits on shares held or owned

Financial institutions shall not hold or possess shares, directly or indirectly, in any company for more than the following specified ratios:

(1.1) 20 percent of financial institutions' total capital in case of aggregated investment in all companies,

(1.2) 5 percent of financial institutions' total capital in case of investment in each individual company,

(1.3) 10 percent of total paid-up shares of such company.

(2) Exceptions to the calculation of the limits

(2.1) The calculation of ratios under Clause 5.2.2 (1.1) – 5.2.2 (1.3) shall exclude:

(2.1.1) Shares held or owned in certain businesses, under the government policy to facilitate the financial institution system as a whole, which are the National Credit Bureau and National ITMX Co., Ltd.

(2.1.2) Shares held or owned in companies that are not in the financial business group¹ by subsidiaries in the financial business group which are supervised by supervisory agencies or under specific supervisory regimes. These include securities companies, insurance companies and venture capital firms. Where, the investment must be in accordance with the regulations prescribed by those supervisory agencies.

(2.1.3) Shares held or owned by the head office or other branches of foreign bank branches acquired from transactions to facilitate capital raising of Thai corporations from abroad and to promote the development of the Thai capital markets, which are firm underwriting transactions, in both primary and secondary market, securities lending transactions in case where securities are redeemed before maturity; however, all of the following conditions must be satisfied.

¹ According to the Bank of Thailand Notification Re: Supervision of Business Structure and Scope of Business of Financial Business Groups and the Bank of Thailand Letter related to financial business group approved on a case by case basis

(a) Foreign bank branches have neither recorded the transactions nor been transferred any risks that may affect their financial conditions and operating performance.

(b) Foreign bank branches have neither received fees nor benefits from holding or owning such shares and not been affected in case of loss.

(2.2) In calculating the percentages of shares held and owned as specified in Clause 5.2.2 (1.2) – 5.2.2 (1.3), shares in overseas financial institutions held or owned by the financial institution for which the relaxation is granted, on a case-by-case basis, by the Bank of Thailand shall be excluded. In requesting the relaxation for the holding or owning of shares in such overseas financial institutions, the financial institution shall submit a request, by giving details of reasons and necessity, to the Financial Institution Applications Department, Bank of Thailand. In granting the approval, the Bank of Thailand will consider the restrictions due to the laws in the countries that the financial institution intends to make investments that refrain foreign investors to invest with control over the local financial institutions, or the restrictions due to the business negotiations. The Bank of Thailand will consider the application no later than 45 days from the requested day and supporting documents are completely and correctly received. And, in granting the relaxation, the Bank of Thailand may impose any other requirements.

5.2.3 Holding or owning of investment units or trust certificates

In holding or owning shares of investment units or trust certificates, financial institution shall comply with the following regulations.

(1) In holding or owning investment units or trust certificates of each fund, except private equity trust funds according to Clause 5.2.3 (2):

Financial institutions are not allowed to hold or own investment units or trust certificates, directly or indirectly, of each mutual fund or trust fund more than the following limits:

(1.1) 20 percent of total paid-up investment units of the fixed income fund,

(1.2) 10 percent of total paid-up investment units of the other mutual fund,

(1.3) 10 percent of total value of the investments of that trust fund.

(2) In holding or owning trust certificates of private equity trust funds

In the case where financial institutions intend to hold or own trust certificates of private equity trust funds more than the ratio prescribed under Clause 5.2.3 (1.3), financial institutions shall comply with the following regulations:

(2.1) Scope of investment of private equity trust funds

Financial institutions shall oversee the private equity trust to ensure that such trust only invests in:

(2.1.1) SMEs according to the law governing promotion of SMEs,

(2.1.2) FinTech,

(2.1.3) Venture capital which are not in the financial business group or other types of private equity business that venture into FinTech.

(2.2) Period for holding or owning trust certificates of private equity trust

Financial institutions may hold or own trust certificates of private equity trust for no more than 10 years from the date that the financial institutions hold or take possession of those trust certificates, unless those trust stipulates in their investment policy that they will invest in the businesses according to Clauses 5.2.3 (2.1.1) or 5.2.3 (2.1.2) for no more than 10 years.

(2.3) Limit on trust certificates of private equity trust funds held or owned

(2.3.1) Limit on trust certificates of each private equity trust held or owned

Financial institutions shall hold or own trust certificates of private equity trust to the extent that they have control over the investment policy of those trust funds.

(2.3.2) Limit on trust certificates of private equity trust funds investing in FinTech

Financial institutions must hold or own trust certificates of private equity trust investing in FinTech, both as direct investment according to Clause 5.2.3 (2.1.2) and investment through venture capital firms that are not subsidiaries of the financial business group, or other types of private equity business according to Clause 5.2.3 (2.1.3), including shares or investments in FinTech firms according to the Bank of Thailand Notification Re: Regulations on Structure and Scope of Business of Financial Business Groups as prescribed below for no more than 3 percent of total capital of the financial institutions:

(a) Shares held by the financial institution or its parent company in FinTech subsidiaries,

(b) Subsidiaries' investments in FinTech Venture Capital,

(c) Investments of subsidiaries' operating venture capital business in other business or private equity trust funds or other types of private equity business investing in FinTech.

In this regard, ratio calculation excludes trust certificates of private equity trust funds that invest in FinTech held or owned by subsidiaries in the financial business group subject to specific supervisory agencies, which are securities companies and insurance companies. In addition, these investments must be in accordance with the regulation as prescribed by those supervisory agencies.

(2.4) Reporting for holding or owning trust certificates of private equity trust

Financial institutions shall prepare reports on the trust certificates of private equity trust held or owned using the data as of the end of June and December and shall retain them for an examination by the Bank of Thailand. The report should at least cover details as prescribed in Attachment 1.

(2.5) Actions in the event of failure to comply with the regulations prescribed under Clauses 5.2.3 (2.1) – 5.2.3 (2.3)

Financial institutions must reduce the trust certificates held or owned in the particular private equity trust fund to no more than 10 percent. For examples, the trust fund has changed the investment policy or types of businesses in which it will invest; other parties have changed their investment proportion in the trust certificates rendering the financial institution to lose control over the investment policy of the trust fund; or the private equity trust fund has invested in one particular business for more than 10 years.

If financial institutions are unable to reduce the trust certificates held or owned in the particular private equity trust fund to no more than 10 percent of total investments in the trust fund, the financial institutions shall maintain capital requirements for the trust certificates held or owned in the private equity trust fund for the amount in breach of the regulations under Clauses 5.2.3 (2.1) – 5.2.3 (2.3), by applying the highest risk weight according to the Bank of Thailand Notification Re: Regulations on Calculation of Credit Risk-Weighted Assets by the Standardized Approach (SA), **except the relaxation is granted on a case-by-case basis by the Bank of Thailand according to Clause 5.2.3 (2.6)**. If the amount in breach of the regulations under Clauses 5.2.3 (2.1) – 5.2.3 (2.3) is indeterminable, financial institutions shall maintain capital requirements for the entire amount of the trust certificates held or owned in that private equity trust fund.

(2.6) Relaxation request

In the case that a financial institution has reasonable cause or necessity to hold or own trust certificates of private equity trust funds that breaches the regulations under Clauses 5.2.3 (2.1) – 5.2.3 (2.3), the financial institutions shall submit a request for relaxation specifying reasons and necessities to the Financial Institution Applications Department, Bank of Thailand. The Bank of Thailand will consider the application within 45 days from the day request and supporting documents are completely and correctly received. In granting relaxation, the Bank of Thailand may prescribe additional regulations to the scope of investment and calculation of capital requirements.

(3) Exceptions to the calculation of the percentages for holding or owning of investment units or trust certificates

The calculation of the percentages according to Clauses 5.2.3 (1) and 5.2.3 (2.3.1) shall exclude the followings:

(3.1) The holding or owning of investment units of mutual funds or trust certificates of trust funds established according to the government policy or with the intention to recover economic and financial institution system e.g. Vayupak Fund, Property Fund for Resolving Financial Institution System Problems (Type-2 Fund), Mutual Fund for Resolving Financial Institution System Problems (Type-3 Fund), Property and Claims Fund (Type-4 Fund) and Asian Bond Fund (ABF),

(3.2) The holding or owning of investment units or trust certificates by subsidiaries in the financial business group subject to specific supervisory agencies or specific supervisory guidelines, which are securities companies

and insurance companies. Where, the investments must be in accordance with the regulations as prescribed by those supervisory agencies.

5.2.4 Shares, investment units and trust certificates held or owned by financial institutions

Shares, investment units and trust certificates held or own by financial institutions according to Clauses 5.2.2 and 5.2.3 including investments of venture capital subsidiaries investing in other venture capital firms, private equity trust and other types of venture capital firms investing in FinTech according to the Bank of Thailand Notification Re: Supervision of Business Structure and Scope of Business of Financial Business Groups must not exceed 30 percent of total capital funds of the financial institutions.

5.2.5 Guidelines and valuation method of investments in securities

Financial institutions shall comply with guidelines on the valuation of investments in securities according to the Accounting Professions Act when calculating the percentages according to this Notification, **excluding the calculation of the percentages for the holding or owning of trust certificates of private equity trust funds according to Clause 5.2.3 (2).**

The aforementioned valuation of investments in securities shall apply to the calculation of the single lending limit according to the Bank of Thailand Notification Re: Supervision of Large Exposures (Single Lending Limit) and the calculation of the ratio of transactions with major shareholders or associated entities according to the Bank of Thailand Notification Re: Supervision of Transactions with Major Shareholders or Associated Entities (Related Lending).

5.2.6 Regulations prescribed under this Notification shall not apply to investments within the financial business groups approved by the Bank of Thailand. In this regard, those financial business groups shall comply with the Bank of Thailand Notification Re: Supervision of Business Structure and Scope of Businesses of Financial Business Groups, and shall also comply with regulations and conditions or relaxation of regulations as prescribed in the Bank of Thailand Letter Re: Request for Establishment of Financial Business Group, approved on a case by case basis.

5.2.7 For a breach of Section 34 of the Financial Institution Business Act B.E. 2551 (2008), whereby the financial institution is able to prove that caution and prudence was exercised in examining the relevant parties; however, the breach was unbeknownst to or unpreventable by the financial institution, it shall be

deemed that the financial institution did not commit the infraction of Section 34, in accordance with Section 129 of the Financial Institution Business Act B.E.2551.

6. Effective Date

This Notification shall come into force as from the day following the dates of its publication in the Government Gazette

Announced on 11th April 2018

(Mr. Veerathai Santiprabhob)

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**Report on Trust Certificates of Private Equity Trust Funds Held or Owned
according to the Law Governing Trust for Transactions in Capital Markets**

Name of the reporting financial institution: Data as of (date):

Table 1: Report on investments of private equity trust funds

(1) Name of investor (Name of private equity trust)	(2) Name of business invested in by private equity trust fund	(3) Industrial classification according to economic activity (ISIC – BOT)	(4) Details of business	(5) Date of investment (Date / Month / Year)	(6) Investment period (Number of years / months / days) (from the date of investment to reporting date)	(7) Amount of investment (Baht) (Number of shares x share price on date of investment)	(8) Shareholding percentage in the business (%)	(9) Exit strategy

Table 2: Report on investments of private equity trust funds in venture capital firms that are not subsidiaries within the financial business group, private equity trust funds, or other types of private equity businesses that venture into FinTech firms

(1) Name of investor (Name of private equity trust fund)	(2) Name of venture capital business that is not a subsidiary in the financial business group / private equity trust fund / other types of private equity business	(3) Country in which (2) is incorporated	(4) Amount of investment in (2) (Baht) (Number of shares x share price on date of investment)	(5) Percentage of investment in (2) (%)	(6) Date of investment (Date / Month / Year)	(7) Investment period in (2) (Number of years / months / days) (from the date of investment to reporting date)	(8) Number of businesses invested by (2) (entities)	(9) Total value of all businesses invested by (2) (Baht)	(10) Number of FinTech firms invested by (2) (firms)	(11) Total value of all FinTech firms invested by (2) (Baht)