
Ministry of Finance Notification

Re: Rules, Procedures, and Conditions for the Licensing and Designation of a Malaysian Qualified ASEAN Bank (QAB) under the ASEAN Framework Agreement on Services

By virtue of Section 9 of the Financial Institution Business Act B.E. 2551 (2008), the Minister of Finance, with the recommendation of the Bank of Thailand, hereby issues the rules, procedures, and conditions for the establishment of a Malaysian foreign commercial bank's subsidiary to undertake commercial banking business in Thailand as a Qualified ASEAN Bank (QAB) under the ASEAN Framework Agreement on Services; and issues the rules, procedures, and conditions for the designation of a Malaysian commercial bank currently licensed to undertake commercial banking business in Thailand as a QAB as follows:

Article 1: This Notification shall come into force on the day following the date of its publication in the Royal Thai Government Gazette.

Chapter 1

General Provision

Article 2: In this Notification,

“Qualified ASEAN Bank” or “QAB” means a commercial bank licensed to undertake commercial banking business under the law on financial institution business, subject to conditions set by Thailand's liberalisation commitments under the ASEAN Framework Agreement on Services, and whose nationality is that of an ASEAN member with whom Thailand has completed liberalisation negotiations under the ASEAN Framework Agreement on Services approved by the Parliament.

“Malaysian QAB” means a commercial bank that is a Malaysian foreign commercial bank's subsidiary that is licensed, or granted approval, to undertake commercial banking business as a QAB in accordance with the rules and conditions prescribed in this Notification.

“Malaysian foreign commercial bank” means a bank established under Malaysian law that has more than one-half of its total number of voting shares sold held by Malaysian nationals, and has Malaysian nationals comprising more than one-half of its total number of persons with power of management.

“Malaysian national” means a natural person of Malaysian nationality under Malaysian law on nationality, or a juristic person established under Malaysian law that has more than one-half of its total number of voting shares sold held by Malaysian nationals.

“License applicant” means a Malaysian foreign commercial bank that does not have business operations in Thailand, and intends to obtain approval to establish a foreign commercial bank’s subsidiary to undertake commercial banking business in Thailand as a Malaysian QAB.

“Designation applicant” means a Malaysian foreign commercial bank licensed to undertake commercial banking business under the law on financial institution business that intends to obtain approval for an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB.

Article 3: A license applicant or designation applicant may submit an application to establish a foreign commercial bank’s subsidiary to undertake commercial banking business in Thailand as a Malaysian QAB, or to obtain approval for an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB, as the case may be. The rules, procedures and conditions are as prescribed in this Notification.

The number of Malaysian QABs and the number of other commercial banks licensed to undertake commercial banking business under the law on financial institution business with more than one-half of its total number of voting shares sold held by Malaysian nationals shall not total to more than three.

Chapter 2

Submission of Application to Establish a Foreign Commercial Bank’s Subsidiary to Undertake Commercial Banking Business as a Malaysian QAB, and Submission of Application for an Existing Commercial Bank Licensed to Undertake Commercial Banking Business under the Law on Financial Institution Business to be Designated as a Malaysian QAB

Article 4: A license applicant or designation applicant must fulfill the following qualifications:

- (1) Has its headquarters situated in Malaysia;
- (2) Has good reputation, business expertise, strong financial standing, good performance and management systems, sound risk management, as well as good governance;
- (3) Has been given support from the license applicant’s supervisory authority in Malaysia to establish a commercial bank in Thailand as a Malaysian QAB; or from the

designation applicant's supervisory authority in Malaysia to obtain approval for an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB; and

(4) Has been given consent from the license applicant's supervisory authority, or the designation applicant's supervisory authority in Malaysia to provide information on the license applicant or designation applicant, to the extent that enables the Bank of Thailand to assess the license applicant or designation applicant's application.

Article 5: A license applicant shall submit an application to establish a commercial bank in Thailand as a Malaysian QAB, or a designation applicant shall submit an application to obtain approval for an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB, along with two copies of all documents to the Bank of Thailand at 273 Samsen Road, Watsamphraya, Pra Nakhon, Bangkok 10200 during business hours. The application must specify that it is for the establishment of a foreign commercial bank's subsidiary in Thailand as a Malaysian QAB, or to obtain approval for an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB.

Article 6: A license applicant shall submit its application together with the following documents:

(1) a letter from the license applicant's supervisory authority, certifying and consenting the license applicant to submit the application for the establishment of a foreign commercial bank's subsidiary in Thailand as a Malaysian QAB, and consenting to provide information as required in Article 4 (4);

(2) a letter of confirmation from the license applicant to, at minimum:

(a) undertake that it shall oversee and ensure the Malaysian QAB's compliance with the laws, regulations, and policies of the supervisory authority and other relevant authorities in Thailand, both those currently in effect and those which will come into force in the future;

(b) undertake that it shall, with utmost effort, provide liquidity and capital support to the Malaysian QAB, immediately when its capital funds fall or may potentially fall below the level required by law; and

(c) undertake that it shall provide the Bank of Thailand with correct and complete information upon the Bank of Thailand's request without delay.

(3) the Malaysian QAB's business plan, which must at least comprise the following details:

(a) comprehensive business strategy;

(b) projected financial statements of no less than three years, with details on the assumptions made for the preparation of such financial statements; and

(c) plan for the establishment of the head office, branches, and financial business group, as the case may be.

(4) the Malaysian QAB's management and administration structure, which shall comprise details on the organizational structure, including the job descriptions of the chairman

of the board of directors, chairman of the executive board and/or chief executive officer, manager, or other equivalent positions whatever they may be titled; names, qualifications, and experience of such persons shall be stated;

(5) work plan to support the Malaysian QAB's business operations with evidence to demonstrate that the Malaysian QAB will have risk management systems commensurate with its business operations; for example, credit risk, market risk, information technology risk, particularly risks arising from its Significant Activities; the extent to which the risk management systems will be sited in Thailand shall be indicated.

Article 7: A designation applicant shall submit the application together with the following documents:

(1) in the case where the existing licensed commercial bank needs to register a new public limited company, it shall submit the documents as required in Article 6;

(2) in the case where the existing licensed commercial bank does not need to register a new public limited company, it shall submit its application together with a letter from the designation applicant's supervisory authority in Malaysia, certifying and consenting the designation applicant to submit the application for the designation of the existing commercial bank licensed to undertake commercial banking business under the law on financial institution business as a Malaysian QAB; and consenting to provide information as required in Article 4 (4).

Chapter 3

Licensing Review Process to Establish a Foreign Commercial Bank's Subsidiary to Undertake Commercial Banking Business as a Malaysian QAB, and Designation Review Process for an Existing Commercial Bank Licensed to Undertake Commercial Banking Business Under the Law on Financial Institution Business to be Designated as a Malaysian QAB

Article 8: The Bank of Thailand shall review the license application or designation application, giving due consideration to the stability of Thai financial institution system. The Bank of Thailand is empowered to consider and resolve problems in relation to the rules, procedures, and conditions prescribed in this Notification; and is empowered to request any additional evidence or document(s) from the license applicant or designation applicant to be used in its review.

Article 9: After the Bank of Thailand has reviewed the license or designation application(s), the Bank of Thailand shall submit the list of license applicant(s) or designation

applicant(s) qualified for the establishment of a foreign commercial bank's subsidiary to undertake commercial banking business as a Malaysian QAB, or for the designation of an existing commercial bank licensed to undertake commercial banking business under the law on financial institution business to be designated as a Malaysian QAB, as the case may be, for the Minister's approval, along with reasons for its recommendation within three months from the date on which the application and supporting documents according to Article 6, Article 7, and Article 8 were received, and the documents were deemed correct and complete. The Minister shall reach a final decision within three months from the date on which the Bank of Thailand's list of applicant(s) and supporting reasons for its recommendation have been received. Upon granting the license or designation approval, the Minister may impose further condition(s) other than those prescribed in Chapter 4.

Article 10: After the Minister has granted approval for the applicant list recommended by the Bank of Thailand in accordance with Article 9, the license applicant or designation application shall proceed as follows:

(1) The license applicant shall submit a request for a license to undertake commercial banking business to the Minister within one year from the approval date, except under reasonable circumstances in which the Bank of Thailand may grant an extension period of no more than six months.

(2) The designation applicant shall submit a request to amend its license conditions or change its license to undertake commercial banking business within one year from the approval date, except under reasonable circumstances in which the Bank of Thailand may grant an extension period of no more than six months.

Chapter 4

Conditions Upon Approval for a License or Designation

Article 11: A Malaysian QAB that has been granted approval to be established shall commence its operation within one year from the date on which the license was granted by the Minister in accordance with Article 10 (1), unless a waiver has been granted by the Bank of Thailand. In granting such a waiver, the Bank of Thailand may impose any additional condition(s). The Bank of Thailand shall promptly notify the Minister of such waiver and any additional condition(s) imposed.

Article 12: A Malaysian QAB must have registered capital of no less than 15,000 million baht, which can be gradually brought into Thailand to support its business operation in a staggered manner, as follows:

- (1) prior to the commencement of its operation, the required minimum amount of capital funds in Thailand is 10,000 million baht;
- (2) at the beginning of the third year from the commencement date, the required minimum amount of capital funds in Thailand is 13,000 million baht;
- (3) at the beginning of the fifth year from the commencement date, the required minimum amount of capital funds in Thailand is 15,000 million baht.

Article 13: A Malaysian QAB may have up to forty service points, with no limitation on location or type of service points. This does not include the head office.

In the case where a Malaysian QAB intends to have more than forty service points, it shall be as mutually agreed between the Bank of Thailand and Bank Negara Malaysia.

Under paragraphs one and two, the number of service points shall be proportionate to the amount of capital funds in Thailand, as follows:

- (1) With 10,000 million baht of capital funds, up to 25 service points are permitted;
- (2) With 13,000 million baht of capital funds, up to 35 service points are permitted;
- (3) With 15,000 million baht of capital funds, up to 40 service points are permitted.

The counting of service points shall be in accordance with the Bank of Thailand Notification Re: Regulations on the Number of, and Counting on, “Service Points” of Subsidiaries of Foreign Commercial Banks and Branches of Foreign Commercial Banks.

Article 14: A Malaysian QAB may employ ASEAN nationals with no limitation on the headcount or job positions.

Article 15: Should a Malaysian foreign commercial bank that is the parent company of a Malaysian QAB intend to undergo a significant shareholder change, to the extent that affects the parent company’s business operation structure, or changes the QAB’s parent company, or changes the QAB’s nationality, the Malaysian QAB shall proceed as follows:

- (1) In the case where there is a plan to change the parent company’s business operation structure, or change the parent company to another Malaysian foreign commercial bank, or change the Malaysian QAB’s nationality to that of another ASEAN member that has liberalisation commitments with Thailand under the ASEAN Framework Agreement on Services, the Malaysian QAB shall submit a request for approval to the Minister through the Bank of Thailand, along with relevant documents prior to implementing such change. Upon granting such approval, the Minister, with the recommendation of the Bank of Thailand, may impose any additional condition(s).

In the case where approval is not granted, the Minister, with the recommendation of the Bank of Thailand, has the power to revoke the commercial banking business license and may issue an order to entirely or partially suspend its business operation during the commercial banking license revocation process, in which case the said Malaysian QAB shall terminate its operations and return the license to the Ministry of Finance through

the Bank of Thailand within the time period prescribed by the Minister; or the Minister, with the recommendation of the Bank of Thailand, may revoke its approval to operate as a Malaysian QAB, in which case the Malaysian QAB shall submit a request to amend the conditions in its license to undertake commercial banking business to the Ministry of Finance through the Bank of Thailand within the time period prescribed by the Minister.

(2) In the case where there is a change of the Malaysian QAB's nationality to that of another nation which does not have liberalisation commitments with Thailand under the ASEAN Framework Agreement on Services, the Minister, with the recommendation of the Bank of Thailand, has the power to revoke the commercial banking business license and may issue an order to entirely or partially suspend its business operation during the commercial banking license revocation process, in which case the said Malaysian QAB shall terminate its operations and return the license to the Ministry of Finance through the Bank of Thailand within the time period prescribed by the Minister; or the Minister, with the recommendation of the Bank of Thailand, may revoke its approval to operate as a Malaysian QAB, in which case the Malaysian QAB shall submit a request to amend the conditions in its license to undertake commercial banking business to the Ministry of Finance through the Bank of Thailand within the time period prescribed by the Minister.

Article 16: In the case where a Malaysian foreign commercial bank that is the parent company of a Malaysian QAB has its license revoked, its business dissolved, or its juristic person status terminated; or in the case where a Malaysian QAB is unable to comply with any regulation(s) or condition(s) as prescribed in this Notification, the Minister, with the recommendation of the Bank of Thailand, has the power to revoke the commercial banking business license and may issue an order to entirely or partially suspend its business operation during the commercial banking license revocation process, in which case the said Malaysian QAB shall terminate its operations and return the license to the Ministry of Finance through the Bank of Thailand within the time period prescribed by the Minister; or the Minister, with the recommendation of the Bank of Thailand, may revoke its approval to operate as a Malaysian QAB, in which case the Malaysian QAB shall submit a request to amend the conditions in its license to undertake commercial banking business to the Ministry of Finance through the Bank of Thailand within the time period prescribed by the Minister.

Article 17: A Malaysian QAB shall not undertake financial institution business in Thailand in any other form(s), unless permitted by the Minister with the recommendation of the Bank of Thailand, or if any law requires otherwise.

(Mr. Arkhom Termpittayapaisith)
Minister of Finance