

Unofficial Translation
by the courtesy of The Foreign Banks' Association

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

Please refer to the Thai text for the official version.

20 April 2006

To Manager

All Commercial Banks*

No. PhorNorSor.(21)Wor.90/2549 Re: Dispatch of the Notification of the Bank of Thailand Re: Permission for a Commercial Bank to Conduct Factoring Business

The Bank of Thailand (BOT) hereby dispatches the Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Factoring Business.

By virtue of the provisions Section 9 bis of the Commercial Banking Act B.E. 2505 as amended, BOT issues the Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Factoring Business dated 3 April 2006, which has been published in the Government Gazette, General Section, No.123 Special Edition 52 Ngor. on 12 April 2006 and be in effect from 13 April 2006 onwards.

Essence of said Notification is as follows:

1. The Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Factoring Business dated 27 September 2004 shall be revoked.

2. Retail banks are permitted to conduct factoring business but limited to domestic factoring, by which the client and the debtor shall be domestic entrepreneurs and obligations that retail banks shall accept the transfer of a claim on repayment are denominated in Thai Baht. However, the scope of business for a retail bank must be in compliance with rules on conducting business of retail banks as stipulated in the Notification of the Ministry of Finance Re: Rules, Procedures and Conditions for Establishing a Commercial Bank dated 23 January 2004 and relevant regulations as stipulated by the Bank of Thailand.

Please be informed and comply with accordingly.

With regards,

(Mrs. Tongurai Limpiti)
Senior Director, Financial Institutions Policy Group
for Governor

* excluding International Banking Facilities

Enclosure: Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Factoring Business dated 3 April 2006

Prudential Policy Department
Tel. 0-2283-5834, 0-2283-6938

Remark: The BOT will arrange a clarification meeting on.....at.....
 No clarification meeting will be arranged.

Notification of the Bank of Thailand
Re: Permission for Commercial Banks to Conduct Factoring Business

1. Objective of the Notification

To encourage commercial banks to offer more financial services in line with the Financial Sector Master Plan, the Bank of Thailand has the intention for commercial banks to have business undertakings that are truly in accordance with the nature of transactions and to have appropriate risk management system, and to be a source of working capital to facilitate liquidity of Small and Medium Enterprises (SMEs).

The objective of this Notification is to permit retail banks to conduct factoring business in accordance with rules, procedures and conditions as stipulated by the Bank of Thailand.

2. Statutory Power

By virtue of the provision of Section 9 bis of the Commercial Banking Act B.E. 2505, as amended, the Bank of Thailand hereby permits commercial banks to conduct factoring business according to rules specified in this Notification.

3. Scope of Application

This Notification is applicable for all commercial banks under the law governing commercial banking, excluding International Banking Facilities.

4. Content

4.1 The Notification of the Bank of Thailand Re: Permission for Commercial Banks to Conduct Factoring Business dated 27 September 2004 shall be revoked.

4.2 Rules for Conducting Factoring Business

Since credit granting in factoring business is short term credit for working capital of entrepreneurs, commercial banks are required to have in place the systems of credit analysis, risk management, debt collection, and data collection and processing, similar to that of employed for banks' credit granting business. In addition, commercial banks must primarily consider the quality of clients and debtors, rather than concentrating merely on increasing quantity of credit volume since these factors have direct impact on the status and operating performance of the commercial banks.

The Bank of Thailand's prudential rules will aim at commercial banks having appropriate risk management system, for which, commercial banks must have good knowledge and understanding of the nature of transactions, clients' and debtors' business, and risk associated. The commercial banks must have a policy and procedures

for business undertakings, including clear and appropriate operating systems and procedures to manage the associated risks and must have good internal control system such as having appropriate procedures and method in assessing credit quality of the clients and debtors.

4.2.1 In this Notification,

“commercial bank” means a commercial bank as specified under the Commercial Banking Act.

“retail bank” means a retail bank as specified under the Notification of the Ministry of Finance Re: Rules, Procedures and Conditions in Permission for Establishing a Commercial Bank dated 23 January 2004.

“factoring business” means business under which a client agrees to transfer its trade receivables to a factor whereby that factor agrees to provide credits, which includes undertaking one of the following transactions:

- (1) account receivables management
- (2) collection of trade receivables
- (3) taking responsibility for debt in case of past due debtors

A factor in the paragraph 1 shall include other factors that receive the transfers or agree to receive the transfers of trade receivables from the factor in paragraph 1 and agree to undertake the transactions in (1) (2) or (3) in paragraph 1 as well.

“factoring contract” means a contract between a commercial bank and a client, in which a client agrees to transfer and a commercial bank agrees to accept the transfers of trade receivables that the client has the claim over a debtor for the purpose of factoring business, including the case where a commercial bank receives the transfers or agrees to receive the transfers of trade receivables from other factors as well.

“with-recourse factoring contract” means a factoring contract that a commercial bank has the right to claim or the right to recourse on clients to pay for debtors’ debt in case where the debtors default on payment.

“without-recourse factoring contract” means a factoring contract that a commercial bank does not have the right to claim or the right to recourse on clients to pay for debtors’ debt in case where the debtors default on payment.

“client” means a person who sells goods or services to debtors and has the right to receive payment of trade receivables from debtors.

“debtor” means a person who purchase goods or services from client and has an obligation to pay trade receivables to client, for which such right to receive payment of trade receivables is then transferred from client to a commercial bank under a factoring contract.

“trade receivables” means the amount of money for goods or services that a debtor must pay a client due to selling of goods or services.

“account receivables management” means filing of and/or reporting of account receivables that is transferred to a commercial bank in accordance with a factoring contract, verifying credit data and debtor status, monitoring the turnover and the outstanding balance of debtors.

“the Minister” means the Minister of Finance.

4.2.2 The Bank of Thailand permits commercial banks to conduct factoring business, and those who wish to conduct factoring business must have qualifications and comply with the rules specified as follows:

(1) have good financial status and operating performances, be able to set required provision and maintain the capital adequacy ratio of no less than that of required by the Bank of Thailand, and be able to maintain any other financial ratios that are specifically ordered by the Bank of Thailand.

(2) have sufficient operating system, data system, and personnel to efficiently support transactions. Such personnel must have adequate knowledge, understanding, expertise and experience in factoring business.

(3) well cooperate with the authorities in implementing the Financial Sector Master Plan particularly adjustment of roles and format of financial institutions, by which commercial banks with more than 1 form of deposit taking entities within same business group must submit the plans for acquisition, merger, business sell-off, return of a license, and accepting the transfers of assets and liabilities from other financial institutions in order to comply with the One Presence Policy as specified by the Bank of Thailand.

Commercial banks who wish to conduct factoring business must submit a letter of intent approved by the bank’s board of director to the Bank of Thailand. Those who have to comply with One Presence Policy under the Financial Sector Master Plan must certify in the letter of intent that they will comply with the plan to acquire, merge, sell off a business, return the license, or accept the transfers of assets and liabilities from other financial institutions in compliance with the One Presence Policy as approved by the Minister including any other conditions that the Minister may impose.

In this regard, the commercial banks shall submit the letter of intent to Supervision Group, the Bank of Thailand. The permission shall be in effect after 30 days ***from the date the Bank of Thailand received the letter of intent.*** Whereas the Bank of Thailand has any objection or request for further clarification in writing, the commercial banks shall be informed of the permission from the Bank of Thailand prior to conducting factoring business.

4.2.3 Commercial bank wishing to conduct factoring business must have effective risk management system that is appropriate to the business as follows:

(1) bank’s board of director must have knowledge and understanding of the nature of business and risks associated.

(2) bank’s board of director must arrange to have an operating system in a clearly written manner and must specify, approve, or given consent to the

policy, strategies, operating procedures, rules and risk management procedures, internal control system, management system and accounting system.

(3) the operating system regarding rules and procedures of risk management for factoring business must at least cover the following areas:

(a) a system to analyze clients' and debtors' credit especially in case of without-recourse factoring business that requires adequate analysis of credit information of every client and debtor to be transferred as well as a system to set client's credit line by taking into consideration the rules or practical guidelines on credit granting as specified by the Bank of Thailand, for example, requirement on necessary credit documentation such as invoice and other trading documents.

(b) a tracking system for transferred receivables according to factoring contract, where such system will enable a commercial banks to have information and data of clients and debtors such as existence of trade receivables, payment capability of debtors, quality of goods delivered and compliance with trading agreement.

(c) risk management through a use of tools such as insurance or advance insurance deposit in accordance with clients' payment capability and types of transactions, as well as risk diversification from concentration of clients in any specific industry.

(d) data collection and reporting system for purposes of monitoring, analysis and business performance evaluation so as to be inspected by the Bank of Thailand.

4.2.4 To disclose information and enhance client's understanding of transactions, commercial banks must prepare a factoring contract in writing and one copy of which will be given to the client as an evidence. The contract must at least specify the following details:

(1) the amount to be received

(2) the right to claim on receivables that commercial banks receive the transfer of or the method to select the right to claim.

(3) the clear calculation method of interest rates, returns and benefits that the commercial banks request from a client, details of which must be attached with the contract that is given to the client.

(4) expenses and fines

(5) contract term

The commercial banks may prepare the detail of (3) and (4) as annex, which is a part of the contract.

4.2.5 To modify, add or change of the interest rate, returns, benefits commercial banks request from the client, expenses or fines specified in the factoring contract, commercial banks must inform the clients in writing at least 14 days in advance, otherwise, the commercial banks can request interest rate, returns, benefits, expenses or fines from the clients for the amount as specified in the contract.

4.3 Supervision Rules

4.3.1 Commercial banks must strictly comply with the general acceptable accounting standards and relevant laws.

4.3.2 In calculating the maximum amount of money in which commercial banks can engage in factoring business with any person, commercial banks must count the exposure arising from credit granted, investments and contingent liabilities, and include with that of arising from transactions of factoring, hire-purchasing, leasing, private repurchase agreement, securities borrowing and lending ***and the contract amount of undertaking credit derivative that commercial banks buy credit risk protection of reference assets that without received cash as collateral from such person at end of any one day*** shall not exceed 25 percent of Tier 1 capital funds of commercial banks.

Regarding the abovementioned calculation of the exposure to any individual person, a commercial bank must follow the guidelines below:

(1) in case of with-recourse factoring contract, the clients who transfer the right to claim on repayment to the commercial bank are subject to the calculation.

(2) in case of without-recourse factoring contract, the debtors are subject to the calculation.

4.3.3 In undertaking factoring business, commercial banks must comply to the rules on assets classification and provisioning, maintenance of capital fund, credit and contingent liabilities review and relevant reporting requirements, as well as income recognition as specified by the Bank of Thailand.

4.3.4 The Bank of Thailand has the authority to revoke or suspend the permission to conduct factoring business in the following cases:

(1) a commercial bank violates or does not comply with the rules and requirements as specified above.

(2) a commercial bank does not act in accordance with the plan, as approved by the Minister, on acquisition, merger, business sell-off, return of a license, accepting the transfer of assets and liabilities from other financial institutions for implementation of One Presence Policy.

(3) a commercial bank does not act in accordance with the conditions stipulated by the Minister in approval of the plan on acquisition, merger, business sell-off, return of a license, accepting the transfer of assets and liabilities from other financial institutions for implementation of One Presence Policy.

(4) any other cases that the Bank of Thailand considers public security or interest is affected.

4.4 Rules in Conducting Factoring Business for Retail Bank

In conducting factoring business, a retail bank must comply with clause no. 4.2 – 4.3 except the scope of business and single lending limit.

4.4.1 Scope of Business

The Bank of Thailand permits retail banks to conduct factoring business in accordance with the rules specified in this Notification, by which a scope of business is limited to domestic factoring. That means clients and debtors must be domestic entrepreneurs and the obligations that retail banks accept for the transfer of claim on repayment are denominated in Thai Baht only. However, the scope in conducting business must strictly be in compliance with rules in conducting business of retail banks as stipulated in the Notification of the Ministry of Finance Re: Rules, Procedures and Conditions for Establishing a Commercial Banks dated 23 January 2004 as well as rules, procedures and conditions specified by the Bank of Thailand.

4.4.2 Calculation of Single Lending Limit

Retail banks must comply with the clause no. 4.3.2 in calculating of the maximum amount that retail banks can engage in factoring business with any person, but retail banks must count the exposure to any person arising from credit granted, investments and contingent liabilities, and include with that of arising from transactions of factoring, hire-purchasing, leasing, private repurchase agreement, securities borrowing and lending and the contract amount of undertaking credit derivative that commercial banks buy credit risk protection of reference assets that without received cash as collateral from such person at end of any one day. Said exposure must not exceed the ratio stipulated in the Notification of the Bank of Thailand on Prescription on ratio of credit granted, investment and contingent liabilities incurred by a retail bank to any person to its capital funds.

5. Effective Date

This Notification shall come into effect on the day after the publication in the Government Gazette onwards.

Given on 3rd April 2006

(M.R. Pridiyathorn Devakula)
Governor
Bank of Thailand