Unofficial Translation

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

Please refer to Thai text for the official version

Notification of the Bank of Thailand

No. FPG. 1/2554

Re: Permission for Commercial Banks to Operate Escrow Services

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1. Rationale

At present, sale and purchase contracts of immovable properties or any other reciprocal contracts primarily rely on trust between contractual parties, thus ensuring that debt repayment will be honored as agreed. Hence, to enhance confidence in sale and purchase of immovable properties and business conducts in general, the Bank of Thailand has thereby permitted commercial banks to offer a deposit service in a form of escrow account since 2001.

Subsequently, the enactment of the Escrow Act B.E. 2551 (2008) was enforced upon escrow services in order to have a trustworthy intermediary appointed to oversee debt repayment of counterparties according to contractual terms. Thus, to clarify such matters and satisfy the intent of the Escrow Act B.E. 2551 (2008), the Bank of Thailand thereby permits commercial banks that fulfill the qualifications stipulated by the Bank of Thailand to operate escrow services in compliance with Section 7, Paragraph 1 of the Escrow Act B.E. 2551 (2008).

This notification is issued to amend the conditions in operating escrow services for commercial banks which received permission to conduct escrow business but subsequently unable to satisfy the stipulated qualifications.

2. Statutory Power

By virtue of Section 36 of the Financial Institution Business Act B.E. 2551 (2008) which is the law that has some provisions pertaining to restriction of the rights and liberties of individuals, whereas Section 29, complemented by Section 31, 33, 36, 41 and 43 of the Constitution of the Kingdom of Thailand grants such rights and liberties by virtue of the statutory provisions, the Bank of Thailand hereby permits commercial banks to operate escrow services in accordance with the guidelines in this Notification.

3. Scope of Application

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

4. Repealed/Amended Notification and Circulars

The Bank of Thailand Notification No. FPG. 6/2552 Re: Permission for Commercial Banks to Operate Escrow Services dated 3 August 2008.

5. Content

The Bank of Thailand permits commercial banks to operate escrow services in accordance with the prescribed guidelines.

5.1 In this Notification,

"Commercial bank" refers to a commercial bank as defined under Section 4 of the Financial Institution Business Act B.E. 2551 (2008).

"Escrow service" refers to fulfillment of duties as an intermediary to ensure that debt repayment of a counterparty complies with an agreed escrow contract. Such conduct may arise from an ordinary course of business and is compensated with remuneration or service fee.

"Escrow contract" refers to an agreement made between a counterparty and its custodian whereby the custodian agrees to oversee and ensure that debt repayment of the counterparty complies with the provisions as agreed by both parties.

"Counterparty" refers to a contractual party under any reciprocal contract whereby one party is obligated to transfer or deliver a property or document that constitutes an evidence of debt and another party is obligated to repay the debt in compliance with the contract.

"Custodian of counterparty" refers to a party that obtains an operating license to provide escrow services under the Escrow Act B.E. 2551 (2008).

"Escrow account" refers to a deposit account that is opened with a financial institution by a custodian of counterparty under its name for the benefits of the counterparty.

5.2 Operating guidelines of escrow services

The bank that intends to offer escrow services shall obtain permission from the minister of the Ministry of Finance and operate such business under the Escrow

Act B.E. 2551 (2008). The Bank of Thailand thereby permits the bank to operate such business under the following guideline:

5.2.1 Scope of the business

(1) The bank that operates escrow services shall have duties to ensure that counterparties observe repayment schedules and contractual terms of escrow contracts and to safeguard money, properties, or documents, that constitute an evidence of debt, which are submitted to be held under its possession, as well as to arrange delivery of money and transfer of ownership rights or property rights to counterparties in accordance with the guideline in Article 5.2.2. In addition, the bank shall also comply with the guidelines set forth in the Escrow Act B.E. 2551 (2008).

(2) Regarding other services set forth under Section 7, Paragraph 2 of the Escrow Act B.E. 2551 (2008), the bank shall obtain permission from the Bank of Thailand prior to the implementation of such services. When such permission is granted, the Bank of Thailand may stipulate any supplementary guidelines and require that the bank also comply with any guidelines issued by the Escrow Services Supervisory Board of directors.

5.2.2 Qualifications of commercial bank

Whereas the operation of escrow services is inherent with operational risks, the bank shall institute sufficient, written operational risk management and prepare a suitable operating plan. The Bank of Thailand thereby stipulates commercial bank’s qualifications for the provision of such services as follows:

(1) The bank that has low, rather low, or average operational risks as reported in the latest audit results can provide general escrow services in accordance with Article 5.2.1 (1) without having to file for approval. However, the bank shall submit an operating plan to the Financial Institution Supervision Department, Financial Institution Supervision Group at the Bank of Thailand for acknowledgment at least 30 days before the implementation of such services.

(2) If a bank does not possess stipulated qualifications stated in Article 5.2.2 (1), it is required that a proposed operating plan be submitted and approved by the Bank of Thailand beforehand.

5.2.3 Conditions for business operation

a. The bank shall prepare a written operating plan which must be approved by its board of directors and propose such plan to the Bank of Thailand for acknowledgment before the implementation of such services. Such operating plan shall contain at least the following particulars:

(1) Business policy and operating procedures: Supplementation or revision of the policy and operating procedures shall also be approved by the bank's board of directors;

(2) Risk management procedures and schemes, internal control system, and management system and accounting system that accommodates the conducts of the business;

(3) Readiness of personnel;

(4) Audit procedure that ensures strict compliance with statutory provisions or other pertinent regulations; and evaluation and review systems must be in place to ensure that the personnel observe stipulated policies and procedures.

b. Commercial bank, which was qualified to operate escrow business in general, has been permitted to undertake the business under Article 5.2.2 and has been providing the escrow services but subsequently fails to meet the stipulated qualifications, shall take the following actions:

(1) Commercial bank receiving general permission under Article 5.2.2 (1)

When the latest audit results indicate that operational risks shifted to a level higher than a medium level, the bank shall make corrective actions and reduce operational risks to the required level set forth by the Bank of Thailand under Article 5.2.2 (1). In this regards, the bank can still operate escrow services.

(2) Commercial bank receiving permission under Article 5.2.2 (2)

In the latest audit, if it is found that the bank's operational risks are still at the relatively high or high level or the bank did not amend or rectify the issues stipulated by the Bank of Thailand as conditions for operating escrow business under Article 5.2.2 (2), the bank shall improve its operational risk or rectify the issues stipulated by the Bank of Thailand as the case may be. In this regard, the bank can still operate escrow services.

In the next round of the Bank of Thailand's audit, if the bank still cannot reduce operational risks and such risks are still higher than a medium level, the bank shall suspend escrow services with new customers from the date the bank learned of the audit results. As for existing customers, the bank can continue to execute such transactions until the expiration of escrow contracts. Nevertheless, if the bank desires to offer escrow services to new customers, it shall file a request for approval with the Bank of Thailand.

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 25th April 2011

(Prasarn Trairatvorakul)
Governor
Bank of Thailand