

Unofficial Translation

With collaboration between the Bank of Thailand and the Association of International Banks

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

Please refer to the Thai text for the official version.

Notification of the Bank of Thailand

No. FPG. 13/2561

Re: Permission for Commercial Banks to Operate Escrow Agent Services

1. Rationale

The Bank of Thailand has permitted commercial banks to operate escrow agent services under the law on escrow by stipulating regulations for commercial bank operating the business to comply, including qualifications for commercial banks operating the business to take into consideration the risk assessment results from Bank of Thailand's examination.

As the Ministerial Regulation on application and issuance of license to operate escrow agent services of financial institutions under the law on escrow has already prescribed qualifications regarding capability and readiness of financial institutions eligible for license to operate escrow agent services, hence in order to reduce duplicating regulations on the qualifications for commercial banks operating escrow agent services, the Bank of Thailand revises its regulations by revoking the stipulation on qualifications for commercial banks and permitting them to operate escrow agent services upon being granted a license from the Minister of Finance under the law on escrow. Whereby, commercial banks shall comply with relevant laws and regulations including the Bank of Thailand's additional regulations. In this regard, if any commercial bank fails to comply with the regulations stipulated by the Bank of Thailand or has any issue from the governance or market conduct examination related to operating the business, the Bank of Thailand may prescribe additional conditions, delay or suspend the business. The intention is for commercial banks to operate the business appropriately by observing good governance and market conduct.

2. Statutory power

By virtue of Section 36 of the Financial Institutions Businesses Act B.E. 2551 (2008), the Bank of Thailand thereby permits commercial banks to operate escrow agent services in accordance with the regulations in this Notification.

3. Repealed notification

The Bank of Thailand Notification No. FPG. 1/2554 Re: Permission for Commercial Banks to Operate Escrow Services dated 25 April 2011

4. Scope of application

This Notification shall apply to commercial banks in accordance with the laws on financial institutions businesses.

5. Contents

5.1 Definition

“Escrow agent service” means escrow service under the law on escrow.

“Escrow contract” means escrow contract under the law on escrow.

“Counterparty” means counterparty under the law on escrow.

“Custodian of counterparty” means a party that obtains an operating license to provide escrow services under the law on escrow.

“Board of directors of commercial bank” means board of directors of a commercial bank incorporated in Thailand or management committee with related power and duties of a foreign commercial bank branch.

5.2 Regulations for escrow agent services

The Bank of Thailand thereby permits commercial banks to operate escrow agent services. Commercial banks intending to offer escrow agent services shall obtain permission from the Minister of Finance. In this regard, commercial banks shall comply with the law on escrow and the Bank of Thailand’s additional regulations as follows:

5.2.1 Scope of business

Commercial banks operating escrow agent services shall be able to perform the following roles:

(1) Ensuring that counterparties observe repayment schedules and contractual terms of escrow contracts by safeguarding money, properties, or documents that constitute an evidence of debt according to the requirements of the counterparties and that the counterparties have 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.

(2) Providing services other than those under Clause 5.2.1 (1) that are related to the escrow contracts as agreed by the counterparties in accordance with the regulation stipulated by Escrow Business Operation Supervision Committee under Section 7, Paragraph 2 of the Escrow Act B.E. 2551 (2008) **and as amended**. Commercial banks shall obtain permission from the Bank of Thailand prior to the offering such services by submitting an application to **the Financial Institution Applications Department, Financial Institutions Policy Group, the Bank of Thailand**, on a case-by-case basis. The Bank of Thailand will complete the consideration within 30 days from the day the request and documents have been completely and correctly received. The Bank of Thailand may stipulate any additional regulation or condition with the permission.

5.2.2 Supervision

(1) Commercial banks shall have written policies for operating escrow business, which are approved by the board of directors of the commercial banks. Furthermore, the board of directors of commercial banks must oversee that the approved policies are applied in the operational plans.

In this regard, the aforementioned policy shall, at the minimum, include the following details:

(1.1) Organization structure of the unit responsible for the business, scope, duties and responsibilities of related units

(1.2) Systems to support the business including risk management system, internal control system, management system and accounting system

(1.3) Human resource readiness

(2) Commercial banks shall oversee, monitor and examine to ensure that they comply with relevant laws and regulations as well as stipulated policies and operational plans.

5.3 Reporting to the Bank of Thailand

(1) Commercial banks shall notify the operating of business in written letter and provide a proof of license to operate escrow agent services, to the Financial Institution Applications Department, Financial Institutions Policy Group, the Bank of Thailand within 30 days from the date the license from the Minister of Finance is received.

(2) In case that a commercial bank's license to operate escrow agent services is revoked by the Minister of Finance or the commercial bank applies to terminate the business with the Minister of Finance, the commercial bank shall submit a letter specifying the cause to the Financial Institution Applications Department, Financial Institutions Policy Group, the Bank of Thailand within 15 days from the date the license is revoked or the date it is permitted to terminate the escrow agent services, on a case-by-case basis.

5.4 Additional conditions, delay or suspension of business

The Bank of Thailand has the power to stipulate additional conditions, delay or suspend the operation of escrow agent services in case that a commercial bank breaches or fails to comply with the law on escrow, or regulations stipulated in this Notification, or a commercial bank has an issue from the examination on governance or market conduct which is related to the business from the latest Bank of Thailand examination, or any other case that the Bank of Thailand deems affecting the security and well-being of the public.

6. Transitional provision

Commercial banks licensed to operate escrow agent services from the Minister of Finance on the effective date of this Notification, may continue the services without reporting to the Bank of Thailand as stipulated under Clause 5.3 (1).

7. Effective date

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

Announced on 24 May 2018

(Mr. Veerathai Santiprabhob)

Governor

Bank of Thailand

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