

Thailand's Financial Institution Act B.E. 2551



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The Thai Royal Gazette published the new important Financial Institution Act B.E. 2551 (2008) (FIA) on 27 January 2008. The FIA, which replaces all existing legislation pertinent to financial institutions, will come into effect after the lapse of 180 days from 27 January 2008. When the FIA comes into force it will affect all types of financial institutions in Thailand namely, commercial banks (local, subsidiaries and branches of foreign banks), credit fonciers, and finance companies. It also extends to govern any businesses involving public funds where no governing laws exist.

Applications for a license to establish and operate a financial institution are to be issued by the Ministry of Finance with the recommendation of the Bank of Thailand. The FIA requires that not less than 75 percent of outstanding shares in financial institutions be named and held by Thai persons. At least $\frac{3}{4}$ of the board of directors must be Thai persons. The FIA requires a report on direct and indirect shareholding by any person for more than 5 percent and prohibits more than 10 percent shareholding by any one shareholder without permission from the Bank of Thailand.

The Bank of Thailand is empowered to stipulate the ratio and reporting requirements concerning the capital reserve and assets versus any liabilities or variations and risks including the classifications of the capital reserve, liquid assets versus the deposit funds or lending amount. Financial institutions are also not permitted to invest more than 20 percent of their capital reserve directly or indirectly in one or more company in all invested companies, 5 percent of its capital reserve in any single company or over 10 percent of the outstanding shares in any company. Among other restrictions, the financial institutions cannot provide credit, lending or obligation of more than 25 percent of its capital reserve in favor of any one person.

Permitted businesses that can be engaged by the financial institutions are subject to the Bank of Thailand's regulations.

Financial institutions must observe the Bank of Thailand's regulations regarding the notification of interest rates, discounts and other service fees including any significant issues of the businesses such as the sale or transfer of business, merger and acquisition. The Bank of Thailand has the authority to regulate and audit parent companies, subsidiaries and affiliates of the financial institutions. This part is new and called 'Conglomerate Supervision'. The extent and procedure as regards to this authority is to be issued by the Bank of Thailand's appointed financial institution inspector. This inspector will have the power to order directors, employees, staff and the auditor of the financial institutions to provide statements and information concerning the business, assets and liabilities of the financial institutions including entering into places to investigate if there is doubt that a business may be conducted in violation of the FIA. The Conglomerate Supervision power of the inspector mentioned above also extends to the parents, subsidiaries and affiliates of the financial institutions. It is important to know that the inspector, under the FIA, is deemed a governmental official pursuant to the Penal Code of Thailand.

A final important aspect of the FIA deals with the correction of financial institutional liquidity problems which gives the Bank of Thailand power to order changes in the capital structure, suspend or revoke directors and licenses to operate the financial businesses. A so-called 'Prompt Corrective Action' is introduced concerning the minimum reserve. As a final measure the Bank of Thailand has the power to appoint a financial institution control committee with one member from the Deposit Protection Institution to take control of an ailing financial institution.

Since the FIA will come into effect in approximately the middle of August 2008, any further regulations will be announced by the Bank of Thailand after the Act comes into force and effect to clarify and lay down procedures as discussed above.

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