

FINANCIAL INSTITUTION BUSINESS ACT

B.E. 2551 (2008)**

BHUMIBOL ADULYADEJ, REX.

Given on the 27th day of January B.E. 2551 (2008)

Being the 63rd Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on commercial banking and the law on undertaking of finance business, securities business and credit foncier business, and to consolidate them into one law.

This Act contains certain provisions in relation to the restriction of rights and liberties, in respect of which, Section 29, in conjunction with Section 31, Section 33, Section 36, Section 39, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law.

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the National Legislative Assembly, as follows:

Section 1. This Act is called the “Financial Institution Business Act B.E. 2551 (2008)”.

* Translated by Chandler and Thong'ek Law Office Limited, and reviewed by Prof. Phijaisakdi Horayangkura under contract for the Office of the Council of State of Thailand's Law for ASEAN project. -Initial Version – pending review and approval by the Office of the Council of State.

** As amended up until FINANCIAL INSTITUTION BUSINESS ACT B.E. 2551 (2008)

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Section 2. This Act shall come into force after the expiration of one hundred and eighty days from the date of its publication in the Government Gazette.

Section 3. The following acts shall be repealed:

- (1) Commercial Banking Act B.E. 2505;
- (2) Commercial Banking Act (No. 2) B.E. 2522;
- (3) Emergency Decree Amending the Commercial Banking Act B.E. 2505, B.E. 2528;
- (4) Commercial Banking Act (No. 3) B.E. 2535;
- (5) Emergency Decree Amending the Commercial Banking Act B.E. 2505 (No. 2), B.E. 2540;
- (6) Emergency Decree Amending the Commercial Banking Act B.E. 2505 (No. 3), B.E. 2540;
- (7) Emergency Decree Amending the Commercial Banking Act B.E. 2505 (No. 4), B.E. 2541;
- (8) Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522;
- (9) Emergency Decree Amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522, B.E. 2526;
- (10) Emergency Decree Amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 2), B.E. 2528;
- (11) Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business (No. 2) B.E. 2535;

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(12) Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business (No. 3) B.E. 2535;

(13) Emergency Decree Amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 3), B.E. 2540;

(14) Emergency Decree Amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 4), B.E. 2540;

(15) Emergency Decree Amending the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522 (No. 5), B.E. 2541.

Section 4. In this Act,

“financial institution business” means the commercial banking business, finance business and credit foncier business, and shall include the undertaking of business of a specific financial institution.

“commercial banking business” means the undertaking of business of accepting deposits of money or accepting money from the public subject to withdrawal on demand or at the end of a specified period and of employing such money in one or several ways such as granting of credits, buying or selling of bills of exchange or any other negotiable instrument, buying and selling of foreign exchange.

“finance business” means the undertaking of business of accepting deposits of money or accepting money from the public subject to repayment on demand or at the end of a specified period, which is not accepting deposits of money or accepting money in the accounts to be withdrawn by cheques, and of employing such money in one or several ways such as granting of credits, buying or selling of bills of exchange or any other negotiable instrument.

“credit foncier business” means the undertaking of business of accepting deposits of money or accepting money from the public subject to withdrawal at the end of a specified period and of employing such money in one or several ways listed below:

- (1) lending money by way of taking mortgage of immovable property;

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- (2) buying immovable property by way of sale with right of redemption.

“financial business” means commercial banking business, finance business, credit foncier business, securities business, futures contract business under the law on futures contracts, life insurance business under the law on life insurance or other businesses as prescribed in the notification of the Bank of Thailand.

“granting of credits” means lending money or buying, discounting, rediscounting bills, becoming a creditor upon having paid or ordered that an amount of money be paid on behalf of a customer, or becoming a creditor upon having paid in accordance with an obligation specified in a letter of credit or other obligations.

“transaction similar to granting of credits” means factoring transaction, hire-purchase transaction, leasing transaction and other transactions similar to granting of credits as prescribed in the notification of the Bank of Thailand.

“securities” means securities under the law on securities and exchange.

“financial institution” means

- (1) a commercial bank;
- (2) a finance company; and
- (3) a credit foncier company.

“commercial bank” means a public limited company licensed to undertake commercial banking business, and shall include a retail bank, a commercial bank which is a subsidiary of a foreign commercial bank and a branch of a foreign commercial bank licensed to undertake commercial banking business.

“retail bank” means a public limited company licensed to undertake commercial banking business with the main objective to provide services to retail customers and medium and small enterprises, and with restriction on undertaking business relating to

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foreign currencies, derivatives and other high-risk transactions, in accordance with the rules prescribed in the notification of the Bank of Thailand.

“commercial bank which is a subsidiary of a foreign commercial bank” means a public limited company licensed to undertake commercial banking business, in which a foreign commercial bank holds shares, whether directly or indirectly, of not less than ninety-five per cent of the total issued shares of that company.

“branch of a foreign commercial bank” means a branch of a foreign commercial bank licensed to undertake commercial banking business in Thailand.

“finance company” means a public limited company licensed to undertake finance business.

“credit foncier company” means a public limited company licensed to undertake credit foncier business.

“capital funds” means money with the following characteristics:

(1) paid-up capital, which includes share premiums received by a financial institution and money received by the financial institution from the issuance of share warrants of that financial institution;

(2) statutory reserve;

(3) reserves appropriated from net profit upon the end of an accounting period pursuant to the resolution of the shareholder meeting or the articles of association of that financial institution, excluding reserves for depreciation of assets and reserves for debt repayment;

(4) net profit after appropriation;

(5) reserves from assets valuation, other reserves; or

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(6) money received by a financial institution from issuance of debt instruments or other instruments or money, as prescribed in the notification of the Bank of Thailand.

“company” means a limited company, a public limited company, a limited partnership, a registered ordinary partnership, or other juristic persons.

“parent company” means a company that has power to control the business of another company, whether directly or indirectly, in any of the following manners:

- (1) having shares in a company more than fifty per cent of its total issued shares;
- (2) having power to control the majority of votes in the shareholder meeting of a company;
- (3) having power to control the appointment or removal of persons with power of management or at least one-half of all directors of a company; or
- (4) having power to control business in any other manner pursuant to the rules prescribed in the notification of the Bank of Thailand.

Holding shares in a company of twenty per cent or more of its total issued shares, whether directly or indirectly, shall be presumed to have power to control the business unless proven otherwise.

“subsidiary” means:

- (1) a company that has another company as its parent company; or
- (2) a subsidiary of the company under (1) of any level along the line.

“affiliate” means any other subsidiary which has a common parent company.

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“person with power of management” means:

(1) a manager, deputy manager, assistant manager, executive director of a financial institution or of a company, as the case may be, or any person holding an equivalent position under any variant title;

(2) a person with whom a financial institution or a company has entered into a contract to delegate its management power in whole or in part; or

(3) a person who has de facto power to control or dominate a manager or director or management of a financial institution or a company to comply with his order in formulating policy or conducting business of the financial institution or the company.

“executive director” means a director with managerial duty in a financial institution or a company pursuant to the rules prescribed in the notification of the Bank of Thailand.

“related person” means a person who is related to another person in any of the following manners:

(1) spouse;

(2) a child or adopted child who is under legal age;

(3) a company of which such person or the person under (1) or (2) has power of management;

(4) a company of which such person or the person under (1) or (2) has power to control the majority of votes in the shareholder meeting;

(5) a company of which such person or the person under (1) or (2) has power to control the appointment or removal of directors;

(6) a subsidiary of the company under (3), (4) or (5);

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- (7) an affiliate of the company under (3), (4) or (5);
- (8) a principal, an agent; or
- (9) other persons having such characteristics as prescribed in the notification of the Bank of Thailand.

Where any person directly or indirectly holds shares in any company in the amount of twenty per cent or more of the total issued shares, it shall be presumed that such company is a related person of such person, unless proven otherwise.

“major shareholder” means a person who holds or possesses shares of a financial institution in excess of five per cent of the total issued shares, including shares held by related persons.

“Minister” means the Minister in charge of the enforcement of this Act.

Section 5. If the undertaking of any business in the manner of mobilization of funds from the public by accepting deposits of money or by any other mean, granting of credits, or financial business affects the overall economy of the country and there is no law that specifically controls the undertaking of such business, the Bank of Thailand may propose an enactment of a Royal Decree prescribing such business undertaking to be subject to the provisions of this Act in whole or in part including the relevant penal provisions. In this regard, the Royal Decree may also specify rules for the supervision of the undertaking of such business.

Section 6. The mobilization of funds from the public by way of sale or distribution of securities under the law on securities and exchange shall not be subject to this Act.

Section 7. A notification of the Bank of Thailand issued under this Act shall come into force upon its publication in the Government Gazette.

Section 8. The Minister of Finance shall be in charge of the enforcement of this Act and be authorized to issue notifications for implementation of this Act.

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A notification under the first paragraph shall come into force upon its publication in the Government Gazette.

The Minister may require the Bank of Thailand to submit any report on information acquired from the operations in accordance with the particulars prescribed by the Minister. The report may be submitted periodically or sporadically and may include explanation or elaboration of such report.

CHAPTER 1

FORMATION AND LICENSE APPLICATION

Section 9. The commercial banking business, finance business or credit foncier business may be undertaken only by a juristic person in the type of public limited company and upon having obtained a license from the Minister by the advice of the Bank of Thailand. In granting such license, the Minister may prescribe rules as deemed appropriate.

Filing an application for formation of a public limited company under the law on public limited companies to undertake the business under the first paragraph shall require the prior approval of the formation from the Minister.

After registration of a public limited company, such public limited company shall file with the Minister through the Bank of Thailand an application for a license according to the form prescribed in the notification of the Bank of Thailand.

The application for and issuance of a license shall be in accordance with the rules and subject to payment of fees as prescribed by the Minister in a notification by the advice of the Bank of Thailand.

Section 10. A foreign commercial bank may establish a branch to undertake commercial banking business in Thailand under this Act only after having obtained a license from the Minister by the advice of the Bank of Thailand. In granting such license, the Minister may prescribe rules as deemed appropriate.

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In applying for a license under the first paragraph, the foreign commercial bank shall present to the Minister through the Bank of Thailand a letter of consent to the application for its branch establishment, from the authority legally in charge of supervision and examination of such foreign commercial bank.

The application for and granting of a license under the first paragraph shall be in accordance with the rules and subject to payment of fees as prescribed by the Minister in a notification by the advice of the Bank of Thailand.

Section 11. A financial institution shall use a name beginning with the word “bank”, “finance company” or “credit foncier company” as specified in the license, as the case may be.

Section 12. No person other than a financial institution shall use a name or word denoting name in financial business as “bank”, “financing”, “financial”, “investment”, “credit”, “trust”, “finance”, “credit foncier company” or any other word that has the same meaning.

The provisions in the first paragraph shall not apply to persons permitted by the Bank of Thailand or persons permitted by other laws.

Section 13. Establishment or moving of the head office or branch, or closure of a branch of a financial institution must be approved by the Bank of Thailand in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 14. A financial institution’s representative office in a foreign country and a foreign financial institution’s representative office within the country may be established only by approval of the Bank of Thailand, provided that the Bank of Thailand may prescribe rules for compliance.

The representative office under the first paragraph shall not directly or indirectly accept deposits of money or accept money from the public subject to withdrawal on demand or at the end of a specified period.

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CHAPTER 2

STRUCTURE OF FINANCIAL INSTITUTION

DIVISION 1

Shares and Shareholders

Section 15. Ordinary shares and preferred shares of a financial institution must be those entered in a name certificate, having a par value of not more than one hundred baht per share, and the articles of association of the financial institution shall contain no share transfer restriction, except a restriction for compliance with this Act.

A financial institution may issue preferred shares without voting right or other preferred shares only upon approval of the Bank of Thailand, provided that the Bank of Thailand may prescribe rules for the financial institution to comply with.

Section 16. The amount of shares of a financial institution held by persons of Thai nationality must not be less than seventy-five per cent of the total number of issued shares with voting right and the number of its directors who are persons of Thai nationality must not be less than three-fourths of the total number of directors.

Where the Bank of Thailand deems appropriate, the Bank of Thailand may permit persons of non-Thai nationality to hold shares up to forty-nine per cent of the total number of issued shares with voting right, and may permit the number of directors of non-Thai nationality to be more than one-fourth but less than one-half of the total number of directors.

Where it is necessary to rectify the operation's condition or to enhance the stability of any financial institution or for the stability of the financial institution system, the Minister may, by the advice of the Bank of Thailand, grant relaxation for any financial institution to have the number of shares or directors other than that prescribed in the second paragraph. In this regard, rules or time clause on the relaxation may also be prescribed.

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Section 17. Any person who directly or indirectly holds or possesses shares of a financial institution in an amount of five per cent or more of the total issued shares shall report the holding or possession of the shares to the Bank of Thailand in accordance with the rules prescribed in the notification of the Bank of Thailand.

The number of shares under the first paragraph shall include the shares held or possessed by related persons of the person under the first paragraph.

The shares under the first paragraph shall not include preferred shares without voting rights.

If the person under the first paragraph fails to report in accordance with the rules prescribed in the notification of the Bank of Thailand, Section 19 shall apply to such unreported shares *mutatis mutandis*.

Section 18. No person shall directly or indirectly hold or possess shares of a financial institution in an amount exceeding ten per cent of the total issued shares, except with permission from the Bank of Thailand or in accordance with the rules prescribed in the notification of the Bank of Thailand.

The number of shares under the first paragraph shall include the shares held or possessed by related persons of the person under the first paragraph.

The shares under the first paragraph shall not include preferred shares without voting rights.

Section 19. Any person who acquires shares of a financial institution to the extent that the number of shares held or possessed by such person is in contravention of Section 18 shall dispose of the excess shares to other person within ninety days from the date of acquisition of the shares, unless relaxation is granted by the Bank of Thailand, and the period of the relaxation shall not exceed ninety days.

If the person under the first paragraph fails to dispose of the excess shares within the period under the first paragraph, the Bank of Thailand may file an application with the court for an order to sell the excess shares. If the court finds that such holding or

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possession of shares contravenes Section 18, the court shall have the power to order a sale thereof by auction or by any other method.

Section 20. No financial institution shall dispose of its shares to any person if such disposition will cause the number of shares held or possessed by such person to contravene Section 18.

The number of shares under the first paragraph shall include those held or possessed by related persons of the person under the first paragraph.

Whenever a solicitation to subscribe for shares of any financial institution is made, that financial institution shall, in the prospectus, specify the rules provided in Section 17, Section 18 and Section 19.

Section 21. Any person who holds or possesses shares of a financial institution in contravention of Section 18 may not raise the holding of such excess shares against that financial institution, and such financial institution may not pay dividends or any other benefit to such person or allow such person to vote at a shareholder meeting on account of the excess shares.

Where the person under the first paragraph acquires the shares in good faith by inheritance, if such financial institution announces a dividend distribution within the ninety days' period from the date of acquisition of the shares or within the relaxation period granted by the Bank of Thailand under the first paragraph of Section 19, such person shall be entitled to receive dividend for the shares exceeding ten per cent under Section 18. However, such person may not vote at a shareholder meeting according to the number of the excess shares.

Section 22. For the purposes of compliance with Section 16, Section 17, Section 18 and Section 19, a financial institution shall examine its register of shareholders prior to each shareholder meeting, or prior to each distribution of dividends or any other benefit to its shareholders and inform the Bank of Thailand of the results of such examination pursuant to the rules prescribed in the notification of the Bank of Thailand.

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If any shareholder is found to be in violation of Section 18, the financial institution shall give a written notice to such person to dispose of the excess shares within the period under Section 19 and notify the Bank of Thailand accordingly.

Section 23. The provisions of Section 15 through Section 22 shall not apply to a branch of a foreign commercial bank established in Thailand and a commercial bank that is a subsidiary of a foreign commercial bank.

DIVISION 2

Directors, Managers or Persons with Power of Management

Section 24. No financial institution shall appoint or allow any person with any of the following characteristics to be, or perform the duties of, a director, manager, person with power of management, or advisor of the financial institution:

- (1) being a bankrupt or having been discharged from bankruptcy for less than five years;
- (2) having been imprisoned by a final court judgment for an offense related to property committed with dishonest intent whether there is a suspension of punishment;
- (3) having been dismissed or discharged from government service, state organization or agency on a charge of malfeasance in office;
- (4) having been in office as a person with power of management in a financial institution when its license was revoked, unless exempted by the Bank of Thailand;
- (5) having been removed from the position of a director, manager or person with power of management of a financial institution under Section 89(3) or Section 90(4) or under the law on securities and exchange, unless exempted by the Bank of Thailand;

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(6) being a director, manager, employee or person with power of management of another financial institution at the same time, unless exempted by the Bank of Thailand;

(7) being a manager or person with power of management other than the position of a director of a company granted credits by, guaranteed by, or given aval by, or having obligation to, such financial institution, except for:

(a) a non-executive director or advisor of the financial institution;

(b) a case granted exemption under the rules prescribed in the notification of the Bank of Thailand;

(8) being a political official, member of the House of Representatives, senator, member of a local council or local administrator or person holding any other political position as prescribed in the notification of the Bank of Thailand;

(9) being an official of the Bank of Thailand, or being a former official of the Bank of Thailand in accordance with the rules prescribed in the notification of the Bank of Thailand, except where such person is appointed by the Bank of Thailand to rectify the financial condition or operation of the financial institution or where it is the holding of office in a financial institution which is a state enterprise in accordance with the law on budgetary procedures, provided that the official or former official of the Bank of Thailand who is still prohibited from holding an office as prescribed by the rules of the Bank of Thailand shall not be entitled to receive any right to purchase shares of such financial institution;

(10) being a person having any prohibited characteristic or other disqualification as prescribed in the notification of the Bank of Thailand.

Section 25. The appointment of a director, manager, person with power of management or advisor of a financial institution requires the prior approval of the Bank of Thailand, irrespective of whether it is the appointment of a new person or reappointment of the same person.

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In granting approval under the first paragraph, the Bank of Thailand shall complete its consideration within fifteen business days from the date the Bank of Thailand receives the application and all relevant documents as prescribed by the Bank of Thailand. If the Bank of Thailand fails to notify the result of the consideration within such period of time, it shall be deemed that the Bank of Thailand has approved such appointment.

Where it appears later that a person approved under the first paragraph has a prohibited characteristic under Section 24, the Bank of Thailand shall revoke the approval already granted.

Section 26. In an annual shareholder meeting, the financial institution has the duty to notify or disclose to the meeting of benefits and remuneration which a director, manager and person with power of management receives from the financial institution and has the duty to inform the meeting of their directorship in other businesses in accordance with the rules prescribed in the notification of the Bank of Thailand.

For the purposes of compliance with the first paragraph, a director has the duty to notify the financial institution of his directorship in other businesses.

Section 27. In the operation of a financial institution, the directors shall act in the same manner as a careful businessman and shall be jointly responsible in the management of the financial institution, including the following matters:

- (1) causing the financial institution to comply with this Act;
- (2) preparing and keeping accounts and relevant documents to demonstrate the true financial condition and results of operations of the financial institution, and the same shall be disclosed to the shareholders, depositors and the public and made available for inspection in accordance with the rules prescribed in the notification of the Bank of Thailand;
- (3) requiring the financial institution to call a shareholder meeting within four months from the end of a six-month accounting period when the financial institution appears to be suffering a loss which renders the shareholders' equity, at the end of the six-month period under Section 67, to be lower than fifty per cent of the paid-up capital, and to call another shareholder meeting when the

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shareholders' equity decreases to lower than twenty-five per cent of the paid-up capital, in order to inform the shareholders of the true financial condition and results of operations of the financial institution.

Section 28. Directors shall be jointly liable to the shareholders, depositors or holders of promissory notes derived from mobilization of funds from the public by the financial institution, for any damage due to failure to perform their duties as ordered by the Bank of Thailand or the financial institution inspector under this Act, unless it can be proven that they were not dishonest or did not take part in such failure to perform their duties.

CHAPTER 3 SUPERVISION OF FINANCIAL INSTITUTIONS

DIVISION 1 Maintenance of Capital Funds and Assets

Section 29. A financial institution shall maintain capital funds in accordance with the rules prescribed in the notification of the Bank of Thailand.

The Bank of Thailand shall have the authority to prescribe the types and kinds of capital funds, including the rules for calculating capital funds of a financial institution.

Section 30. A financial institution shall maintain its capital funds in proportion to its assets, indebtedness, obligation or variables and any other risk in accordance with the rules prescribed in the notification of the Bank of Thailand.

In prescribing under the first paragraph, the Bank of Thailand may generally require financial institutions to maintain their capital funds in proportion to their assets, indebtedness, obligation or variables and any other risk according to the size or type of assets, liabilities, obligation or variables and risks in aggregate of all types or for each type. If it appears that any financial institution has high risk exposure, the Bank of Thailand may order such financial institution to take any relevant action as deemed appropriate.

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Section 31. A financial institution shall disclose information related to maintenance of its capital funds and information related to its risk or its financial business group's risk in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 32. A branch of a foreign commercial bank licensed to undertake business as provided in this Act shall maintain assets in Thailand or hold securities in a foreign country in accordance with the rules prescribed in the notification of the Bank of Thailand. Such assets or securities shall be considered as capital funds under this Act.

The assets or securities under the first paragraph consist of:

- (1) money brought in from its head office or other branch outside Thailand of such foreign financial institution;
- (2) various reserves, excluding reserves for diminution of the value of assets and reserves for repayment of debts; or
- (3) net profit of the branch in respect of each accounting year after deduction of loss incurred in all accounting years including profits which have been transferred to the account of the head office but have not been remitted abroad.

DIVISION 2

Investment by Financial Institutions

Section 33. Subject to Section 34 and Section 35, a financial institution may invest in securities for its own ownership in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 34. In accordance with the rules prescribed in the notification of the Bank of Thailand, no financial institution shall directly or indirectly hold or possess shares of any company in excess of the following ratios:

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(1) twenty per cent of the total capital funds of such financial institution, for the aggregate holding or possession of shares in all companies;

(2) five per cent of the total capital funds of such financial institution, for the holding or possession of shares in each company; or

(3) ten per cent of the total issued shares of such company.

Where necessary, the Bank of Thailand shall have the authority to prescribe a maximum ratio of holding or possession of shares to be lower than that under the first paragraph, provided that a notification thereof shall be made not less than fifteen days prior to its effective date.

Where a financial institution needs to hold or possess shares in any company due to a debt restructuring, debt repayment, enforcement of debt repayment, providing security for granting of credits, or for operating a business supporting the financial institution's business, the Bank of Thailand shall have the power to grant relaxation for holding or possession of shares in excess of the ratios prescribed under the first paragraph. Such relaxation may be granted with any condition.

The shares held by related persons of the financial institution shall be included as shares held or possessed by the financial institution under these provisions.

The provisions of this Section shall not apply to the case under the third paragraph of Section 58.

Section 35. No financial institution shall hold or possess the following securities:

(1) shares or securities related to shares of other financial institutions undertaking business of the same type, except those acquired as a result of a debt repayment or providing security for granting of credits, which shall be disposed of within 6 months from the date of acquisition, or those bought or acquired by virtue of the relaxation of the Bank of Thailand. In granting such relaxation, the Bank of Thailand may prescribe any certain rule.

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(2) securities related to shares of that financial institution pursuant to the rules prescribed in the notification of the Bank of Thailand.

DIVISION 3

Business Undertaking

Section 36. A commercial bank, finance company or credit foncier company shall undertake only commercial banking business, finance business or credit foncier business, as the case may be, and business incidental to or necessary for undertaking commercial banking business, finance business or credit foncier business as prescribed in the notification of the Bank of Thailand. The Bank of Thailand may prescribe in its notification the incidental or necessary business classified according to each type of financial institutions and commercial banks and may prescribe rules for undertaking such incidental or necessary businesses.

Section 37. A financial institution shall open for business at its office at least on the days and during the hours prescribed in the notification of the Bank of Thailand, unless otherwise permitted by the Bank of Thailand. Such permission may be granted with any condition to be complied with.

In each year, the financial institution shall have customary holidays as prescribed in the notification of the Bank of Thailand.

A notice stating business days and hours and holidays shall be posted in an open area at the office of such financial institution.

Section 38. A financial institution shall post information concerning interest rates, discount rates, and service charges, whether called by different descriptions, including any other information relating to the financial institution in an open area at the office of such financial institution, for the purpose of informing the public and customers contacting or using services in that place. A report together with a copy of such notices or information shall also be submitted to the Bank of Thailand in accordance with the rules prescribed in the notification of the Bank of Thailand.

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A financial institution shall publish the information under the first paragraph in any media in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 39. For the purposes of protecting consumers, the Bank of Thailand shall have the power to issue notifications requiring compliance by financial institutions of any type in the following matters:

(1) acceptance of deposits of money, acceptance of money from the public, borrowing of money, investment, granting of credits, undertaking of obligation, and undertaking of other businesses that may be carried on by the financial institution;

(2) execution of a juristic act or contract with a member of the public, consumer or retail customer in the course of undertaking of business of the financial institution, which involves an amount or value as prescribed by the Bank of Thailand, whether with regard to the substance, benefit calculation method, or contract form;

(3) execution of a personal guarantee contract which shall specify the principal amount limit or shall not require the guarantor to give an unlimited guarantee;

In case of guarantee of a debt with a definite period for repayment and the financial institution grants an extension of time to the primary debtor but they are unable to settle within six months, the financial institution shall inform the guarantor accordingly;

(4) actions that must be taken if a concluded juristic act or contract made allows the financial institution to unilaterally amend the contract; and

(5) disclosure of information relating to the financial institution.

Section 40. A financial institution shall inform the public and customers applying for credits, of the annual rate of service charges, and shall also show the method and details of calculation thereof.

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The annual rate of service charges under the first paragraph are the total annual charges collected by the financial institution from the public and consumers in granting of credits, including interests, discounts and service charges.

The Bank of Thailand shall have the authority to prescribe the method of calculation of the annual rate of service charges for a financial institution to comply with.

Section 41. In undertaking the business of acceptance of deposits of money, acceptance of money from the public, granting of credits, borrowing of money, investment, undertaking of obligation, purchase or sale of bills of exchange or any other negotiable instrument, or purchase or sale of foreign exchange, the financial institution shall comply with the rules prescribed in the notification of the Bank of Thailand.

The prescription under the first paragraph may be made according to the types of deposits or borrowings, types of persons, types of documents pertaining to acceptance of deposits of money or borrowing, or types of instruments.

Where it is necessary for the stability of a financial institution and for inspection by the financial institution inspector, the Bank of Thailand shall have the power to require compliance by the financial institution in the following matters:

- (1) execution of any juristic act relating to the business undertaking of the financial institution;
- (2) examination and internal control of the financial institution; and
- (3) management and administration of the financial institution.

Section 42. For the purposes of rectifying any adverse economic condition, the Bank of Thailand shall have the power to prescribe in its notification in the following matters:

- (1) determining the maximum amount by which a financial institution may grant credits, conduct transactions similar to granting of credits, accept or give aval for bills with regard to any type of business. Such determination

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may be made in proportion to the total amount of credits, transactions similar to granting of credits, and acceptance or giving aval for bills granted by the financial institution, or in proportion to the capital funds of the financial institution or the total amount of money which the financial institution has borrowed and received from the public at any time; and

(2) prohibiting a financial institution from increasing the grant of credits or conducting transactions similar to granting of credits to any type of business or at the rate higher than the prescribed one. The prohibition may be made in proportion to the total amount of money by which the financial institution grants credits or conducts transactions similar to granting of credits to each business at any given time.

Section 43. In the following cases, a financial institution shall obtain the prior approval of the Bank of Thailand:

(1) sale or transfer of the whole or certain substantial parts of its businesses to another person in accordance with a resolution of the shareholder meeting adopted by the votes of not less than three-fourths of the total votes of shareholders attending the meeting and having the right to vote;

(2) purchase or acceptance of transfer of the whole or certain substantial parts of businesses of other company to the financial institution in accordance with a resolution of the shareholder meeting adopted by the votes of not less than three-fourths of the total votes of shareholders attending the meeting and having the right to vote; or

(3) execution of a contract, consent or delegation to other person who is not a director, manager or officer of the financial institution to have absolute or part of power of management of the financial institution, or to merge the business with any other person with an objective towards profit and loss sharing.

In granting approval under the first paragraph, the Bank of Thailand may prescribe any rule for the financial institution to comply with and shall report the same to the Minister for information without delay.

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Section 44. Any financial institution other than a credit foncier company may accept deposits of money subject to withdrawal at the end of a specified period by way of issuing a certificate of deposit.

A certificate of deposit shall contain the following particulars:

- (1) the designation of it as a certificate of deposit;
- (2) the name of the financial institution issuing the certificate of deposit;
- (3) the locality province of the issuer of the certificate of deposit;
- (4) the date of issuance of the certificate of deposit;
- (5) an unconditional agreement to pay a certain sum certain of money including interest (if any);
- (6) the maturity date;
- (7) the place of payment;
- (8) the name of depositor, or a statement that payment be made to bearer; and
- (9) the signature of the person authorized to sign on behalf of the financial institution issuing the certificate of deposit.

Section 45. The provisions of Section 764 through Section 766, Section 899 through Section 907, Section 911, Section 913(1) and (2), Section 914 through Section 916, the first paragraph and the third paragraph of Section 917, Section 918 through Section 922, Section 925, Section 926, Section 938 through Section 942, Section 945, Section 946, Section 948, Section 949, Section 959, Section 967, Section 971, Section 973, Section 986, Section 994 through Section 1000, Section 1006 through Section 1008, Section 1010 and Section 1011 of the Civil and Commercial Code shall apply to the certificates of deposit *mutatis mutandis*.

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Section 46. Where there is reasonable ground, the Bank of Thailand may require compliance by financial institutions with regard to any of the following matters as may be specified in its notification:

- (1) chargeable interests or discounts ;
 - (2) payable interests or discounts ;
 - (3) chargeable service charges ;
 - (4) demandable deposits;
 - (5) collateral in the form of property to be demanded;
 - (6) demandable benefits from transactions similar to granting of credits;
- and
- (7) demandable penalties.

All the monies, properties or other things which can be determined in terms of money, which a depositor or any person receives from a financial institution, an officer or employee of a financial institution in the course of taking deposit of money, borrowing or receiving money, or which a financial institution, or an officer or employee of the financial institution receives in the course of undertaking business of the financial institution, shall be regarded as interests, discounts or service charges, as the case may be, provided that the service charges prescribed by the Bank of Thailand under (3) shall not be regarded as interests or discounts chargeable by a financial institution under (1).

The prescription under the first paragraph may be made according to the type of business, borrowing, acceptance of money from the public or transactions which the financial institution may pay or charge, or may be made by specifying the method of calculation and the period of time for payment or collection of payment.

Section 47. A financial institution may use services provided by a third party in undertaking its business in accordance with the rules prescribed in the notification of the Bank of Thailand.

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DIVISION 4
Restrictions on Granting of Credits

Section 48. Subject to Section 59, no financial institution shall directly or indirectly:

(1) grant credits, conduct transactions similar to granting of credits or provide guarantee for any of its directors, managers, deputy managers, assistant managers or persons holding an equivalent position under a different title, persons with power of management, or any related person of those persons, except granting of credits in the form of credit cards at the maximum rate prescribed by the Bank of Thailand, or granting of credits as welfare to those persons in accordance with the rules prescribed in the notification of the Bank of Thailand;

(2) accept bills, give aval for bills or intervene for honor in bills which any of its directors, managers, deputy managers, assistant managers or persons holding an equivalent position under a different title, persons with power of management, or any related person of those persons is the drawer, maker or endorser;

(3) pay money or give any other property to any of its directors, managers, deputy managers, assistant managers or persons holding an equivalent position under a different title, persons with power of management of the financial institution, or to any related person of those persons as remuneration for or by reason of any transaction or business of the financial institution other than gratuities, salaries, rewards and other additional payments which may normally be paid to them;

(4) sell, give or let any property to any of its directors, managers, deputy managers, assistant managers, persons holding an equivalent position under a different title, persons with power of management, major shareholders, or to any related person of those persons, or buy or lease any property from those persons with an aggregate value in excess of that prescribed by the Bank of Thailand, except with the approval of the Bank of Thailand; and

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(5) grant any other benefits to any of its directors, managers, deputy managers, assistant managers, persons holding an equivalent position under a different title, persons with power of management, or to any related person of those persons, in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 49. Subject to Section 59, no financial institution shall grant credits, invest, undertake obligation, or conduct transactions similar to granting of credits to a major shareholder, or to business with related interest, whether in one or several transactions combined, at the end of any one day for each such shareholder, in excess of five percent of any type of its capital funds, or in excess of twenty-five percent of the total liabilities of such major shareholder or of such business with related interest, whichever is the lesser, provided that credit granting, investment, obligation undertaking or transactions similar to granting of credits to a related person of the major shareholder shall be deemed as those of such major shareholder as well.

Where there is reasonable ground, the Bank of Thailand may prescribe the maximum ratio in granting credits, investment, undertaking of obligation, or conducting transactions similar to granting of credits to a major shareholder or to the business with related interest higher than that prescribed in the first paragraph in accordance with the rules prescribed in the notification of the Bank of Thailand.

The granting of credits, investment, undertaking of obligation, or conducting transactions similar to granting of credits under the first paragraph shall be in accordance with the rules prescribed in the notification of the Bank of Thailand.

Business with related interest under the first and second paragraphs means a company in which the financial institution, its directors, persons with power of management, or any related person of those persons hold shares in aggregate more than ten per cent of the total issued shares of that company.

Section 50. In accordance with the rules prescribed in the notification of the Bank of Thailand, no financial institution shall grant credits, invest, undertake obligation, conduct transactions similar to granting of credits to any one or several persons jointly in

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any project or for the same purpose, at the end of any one day, in excess of twenty-five percent of any type of its capital funds.

The prescription by the Bank of Thailand under the first paragraph may be made in terms of the amount of money or the ratio which is lower than that stipulated.

Where any financial institution carries out merger and acquisition, debt restructuring, or disposal, distribution or transfer of assets to an asset management company or where otherwise appropriate, the Bank of Thailand may grant a relaxation so that such financial institution shall not be required to comply with the first paragraph on a temporary basis.

Where the person under the first paragraph is a company, the amount of money granted as credits, invested, undertaken as obligation, or involved in transactions similar to granting of credits shall not exceed the ratio to the capital or the capital funds of such company as prescribed by the Bank of Thailand, unless a relaxation is granted by the Bank of Thailand.

In case of granting of credits, investment, undertaking of obligation, or conduct of transactions similar to granting of credits to any juristic person, those made to its parent company, subsidiary and affiliate shall be regarded as being made to such juristic person.

In case of granting of credits, investment, undertaking of obligation, or conduct of transactions similar to granting of credits to any person, those made to such person's related person shall be regarded as being made to such person.

Granting of credits by buying, discounting or rediscounting a bill under the first paragraph shall be deemed as granting of credits to the holder who sells the bill and to all persons who are liable under the bill, except those bills are in accordance with the rules prescribed in the notification of the Bank of Thailand.

Where any financial institution has a risk hedging in granting of credits, investment, undertaking of obligation or conduct of transactions similar to granting of credits, from other financial institution or company in accordance with the rules prescribed in the notification of the Bank of Thailand, such financial institution shall be deemed to have

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granted credits, invested, undertaken obligation or conducted transactions similar to granting of credits, as mentioned in the first paragraph, to the financial institution or company providing the risk hedging.

Section 51. No financial institution shall grant credits, invest, undertake obligation or conduct transactions similar to granting of credits to each type of business in excess of the ratio to its capital funds or assets as prescribed in the notification of the Bank of Thailand.

Section 52. The provisions of Section 50 and Section 51 shall not apply to a financial institution in the following cases:

(1) granting credits or undertaking obligation whereby the Ministry of Finance provides guarantee for the principal and interest, not exceeding the amount so guaranteed.

(2) granting credits or undertaking obligation to the Financial Institutions Development Fund or the Bank of Thailand;

(3) investing by buying Thai Government securities, Bank of Thailand securities, the Financial Institutions Development Fund securities, or the Deposit Protection Agency securities, securities issued by a state enterprise established by a specific law, or securities whose principal and interest are guaranteed by the Ministry of Finance, the Bank of Thailand, the Financial Institutions Development Fund, or the Deposit Protection Agency, at the price not exceeding the par value;

(4) granting credits secured by deposits of such financial institution, Thai Government securities, Bank of Thailand securities, the Financial Institutions Development Fund securities, or the Deposit Protection Agency securities, securities issued by a state enterprise established by a specific law, or securities whose principal and interest are guaranteed by the Ministry of Finance, the Bank of Thailand or the Financial Institutions Development Fund or the Deposit Protection Agency, in the amount not exceeding the amount of the deposits used as security or the par value of the securities;

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(5) underwriting securities in accordance with the rules prescribed in the notification of the Bank of Thailand;

(6) interbank lending in accordance with the rules prescribed in the notification of the Bank of Thailand;

(7) granting credits, investing, undertaking obligation or conducting transactions similar to granting of credits with low risk or with risk equivalent to that of government securities in accordance with the rules prescribed in the notification of the Bank of Thailand; or

(8) issuing commercial letters of credit.

DIVISION 5

Financial Business Group

Section 53. A financial business group consists of a financial institution and other companies undertaking financial business or any business supporting financial business with the following characteristics:

(1) a financial business group composed of a financial institution as parent company, and other one or more companies as subsidiaries; or

(2) a financial business group composed of a parent company that is not a financial institution, but having a financial institution as subsidiary, and there may be one or more subsidiaries as affiliates.

Section 54. No financial business group shall be established unless permitted by the Bank of Thailand in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 55. The provisions of Section 16 through Section 22 shall apply to shareholding or possession of shares in the parent company of a financial institution *mutatis mutandis*.

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The provisions of Section 25 shall apply *mutatis mutandis* to the appointment of directors, managers, persons with power of management, or advisors of the parent company of a financial institution and its subsidiaries undertaking financial business.

The provisions of the first and second paragraphs shall not apply to the parent company or subsidiary of a financial institution where there is a law which governs the undertaking of business by the parent company or subsidiary of the financial institution and which has specifically prescribed the rules for such matters.

Section 56. The companies within a financial business group may undertake only financial business or supporting businesses as prescribed in the notification of the Bank of Thailand, and may not undertake any other trade or business.

The Bank of Thailand may prescribe rules for the undertaking of financial business or supporting businesses under the first paragraph, unless the law governing the undertaking of any such business has specifically prescribed rules for the undertaking of business in such matters.

Section 57. For the purposes of inspection of the stability of a financial business group, the Bank of Thailand shall have the authority to supervise and examine the financial institution, its parent company, subsidiaries and affiliates as if they were the same juristic person, in accordance with the rules prescribed in the notification of the Bank of Thailand, unless the law governing the undertaking of such business has specifically prescribed rules for the undertaking of business in such matters.

In proceeding under the first paragraph, the Bank of Thailand shall have the power to prescribe the ratio of capital funds or capital of the financial business group of such financial institution to assets, liabilities, obligation or variables and any other risk, or to prescribe other ratios of the financial business group of such financial institution, and to require the financial business group to disclose information among each other in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 58. A financial institution may not establish or have a subsidiary, unless authorized by the Bank of Thailand.

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In granting authorization under the first paragraph, the Bank of Thailand may prescribe any other condition to be complied with by the financial institution or the subsidiary.

No financial institution shall purchase or possess shares in its subsidiary, with the total value of such shares exceeding the ratio to the total capital funds or capital fund of any type in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 59. A financial institution may grant credits to, or enter into transactions with, its parent company, subsidiary or affiliate, provided that the amount thereof shall not exceed that prescribed in the notification of the Bank of Thailand, unless authorized by the Bank of Thailand.

Transactions under the first paragraph shall include:

- (1) purchase or sale of assets, including the assets with an agreement to repurchase them from the parent company, subsidiary or affiliate;
- (2) acceptance of securities issued by its parent company, subsidiary or affiliate, as collateral for granting credits, issuing a letter of guarantee or letter of credit for the parent company, subsidiary or affiliate; and
- (3) any transaction which will benefit its parent company, subsidiary or affiliate.

Granting of credit to or entry into a transaction with a related person of the parent company, subsidiary or affiliate shall be regarded as doing so to or with such company.

DIVISION 6

Classification of Assets and Provisioning

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Section 60. A financial institution shall classify its assets and obligation that are impaired or may be impaired, and shall write off or make provisions for such assets and obligation in accordance with the rules prescribed in the notification of the Bank of Thailand.

Where, after deduction of the classified assets or obligation that have not been written off or have not been made provisions for from the capital fund, the remaining capital fund is lower than the amount required to be maintained in accordance with Section 30, the Bank of Thailand shall have the authority to impose any relevant measure to be taken by the financial institution until the rules under the first paragraph have been complied with.

If the rules prescribed under the first paragraph results in an increase in the writing off of assets or an increase of provisions, such rules shall be announced not less than thirty days before their effective date.

Section 61. A financial institution shall make provisions for other assets and obligation that are unimpaired in accordance with the rules prescribed in the notification of the Bank of Thailand, provided that the ratio prescribed shall not exceed five percent of other assets and obligation that are unimpaired.

Section 62. A financial institution shall cease recognizing and reverse accrued interest received as income from classified assets in accordance with the rules prescribed in the notification of the Bank of Thailand.

DIVISION 7

Management of Assets and Maintenance of Liquid Assets

Section 63. A financial institution shall manage its assets, liabilities and obligation so as to match them to the deposits, borrowings, or acceptance of money from the public in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 64. A financial institution shall maintain liquid assets in proportion to the total or each type of deposits or loans at not less than the ratio prescribed in the notification of the Bank of Thailand.

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The Bank of Thailand may in its notification require a financial institution to maintain only certain types or all types of liquid assets or require the ratio of each type on a general basis or, where appropriate, on a specific basis.

If the prescription under the first or second paragraphs results in an increase in the ratio of liquid assets of the financial institution, such prescription shall be announced not less than fifteen days before its effective date.

Section 65. Liquid assets are:

- (1) cash;
- (2) deposits at the Bank of Thailand;
- (3) net deposits at other financial institutions;
- (4) unencumbered certificates of deposit;
- (5) unencumbered securities of Thai Government, Bank of Thailand, or Financial Institutions Development Fund;
- (6) unencumbered debentures or bonds whose principal or principal and interest are guaranteed by the Ministry of Finance, the Bank of Thailand or the Financial Institutions Development Fund;
- (7) any other asset to which the Ministry of Finance, the Bank of Thailand, or the Financial Institutions Development Fund undertakes ultimate compensation for damage, as prescribed in the notification of the Bank of Thailand; and
- (8) other assets that are liquid and creditworthy in accordance with the rules prescribed in the notification of the Bank of Thailand.

The liquid assets under (4), (5), (6) and (8) must be negotiable.

DIVISION 8

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Preparation of Accounts, Reporting and Auditors

Section 66. A financial institution shall prepare its accounts to show its actual results of operations and financial condition, based on the accounting standard established by a professional institution approved by relevant government agencies and in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 67. A financial institution shall prepare its financial statements for every six-month period and twelve-month period which is the accounting year of that financial institution in the forms prescribed in the notification of the Bank of Thailand and the financial statements shall be audited and given opinion by an auditor who has been approved by the Bank of Thailand as an auditor for such accounting year.

A financial institution shall post its financial statements prepared in accordance with the first paragraph and audited by the auditor and certified by the directors of the financial institution, in a conspicuous place at the head office and branches of such financial institution, including posting in any media in accordance with the rules prescribed in the notification of the Bank of Thailand, and shall submit the same to the Bank of Thailand.

Preparation of financial statements for the accounting period of the first six months of the accounting year under the first paragraph, auditing and giving of opinion under the first paragraph and posting and submission to the Bank of Thailand under the second paragraph shall be completed within three months from the end of the accounting period.

Preparation of financial statements for the accounting year under the first paragraph, and auditing and giving of opinion under the first paragraph shall be completed before submission to the general meeting of shareholders, and posting and submission to the Bank of Thailand under the second paragraph shall be completed within twenty-one days from the date on which the financial statements were approved by the general meeting of shareholders. The period of time for taking all such actions shall not exceed four months from the end of such accounting year.

The provisions of this Section shall not apply to a branch of a foreign commercial bank.

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Section 68. A branch of a foreign commercial bank shall declare the financial statements of the foreign commercial bank within one month from the date the foreign commercial bank posted its financial statements, in a conspicuous place at the office of the branch of the foreign commercial bank.

A branch of a foreign commercial bank shall prepare its financial statements for every twelve-month period which is the accounting year of that branch of foreign commercial bank in the form prescribed in the notification of the Bank of Thailand.

The branch of foreign commercial bank shall post its financial statements prepared in accordance with the second paragraph and audited and given opinion by the auditor, in a conspicuous place at the office of such branch, and in any media in accordance with the rules prescribed in the notification of the Bank of Thailand, and shall also submit the same to the Bank of Thailand.

Section 69. An auditor approved by the Bank of Thailand under Section 67 shall adhere to the professional ethics and perform audit work in order to state his opinion on the financial statements in accordance with the standard prescribed under the law on accounting including the additional requirements as prescribed in the notification of the Bank of Thailand, and shall complete opinion giving for the financial statements within the time which will enable the financial institution to timely perform in accordance with Section 67.

If the financial institution has made an untrue document in support of its accounting entry or an untrue accounting entry, the auditor shall disclose the material facts of the account that affect the financial statements, in the audit report on which he has to sign to give opinion, and shall report such event to the Bank of Thailand.

If any auditor fails to comply with the provisions of the first or second paragraphs, the Bank of Thailand may revoke its approval for that auditor under Section 67.

Section 70. If the auditor has reasonable doubt that there is a dishonest act in any financial institution, the auditor shall promptly notify the Bank of Thailand thereof and submit relevant documents or evidence to the Bank of Thailand.

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Section 71. The Bank of Thailand may require a financial institution, its parent company, subsidiary, affiliate, or a company in the financial business group of such financial institution to submit reports or information in any form of media or produce any documents at any interval or from time to time as required by the Bank of Thailand, including to provide clarifications or elaborate such reports, information or documents in accordance with the rules prescribed in the notification of the Bank of Thailand.

The Bank of Thailand may order the financial institution to cause its directors, managers, officers, employees, persons with power of management or auditor to make a statement, adduce information, accounts and other documents and evidence relating to the business of the financial institution within the time prescribed.

The financial statements, reports, information, documents or clarifications submitted or adduced pursuant to the first and second paragraphs shall be completely and truthfully prepared by the financial institution to become complete and truthful. If the Bank of Thailand determines that the financial statements, reports, information, documents or clarifications submitted or adduced pursuant to the first paragraph are incomplete or ambiguous, or where the Bank of Thailand deems it necessary or appropriate, the Bank of Thailand shall exercise its authority to appoint an auditor or specialist at the expense of such financial institution to conduct an inspection and report the results thereof to the Bank of Thailand.

DIVISION 9
Merger, Transfer and Dissolution of Business

Section 72. Where any financial institution merges with another financial institution, it shall result in a cancellation of the license of the former financial institution.

Section 73. If any financial institution wishes to merge with another financial institution or transfer or accept the transfer of the whole or substantial part of business to or from another financial institution, or if any financial institution or its major shareholder wishes to purchase or hold shares of another financial institution, whether it is the same type or different type of financial institution, in order to merge, transfer or acquire the business which will enhance the standing operations of the financial institution, that financial institution or its major shareholder, as the case may be, shall submit to the Bank of Thailand a plan showing details of the steps to be taken. If the Bank of Thailand approves the plan, the Bank of Thailand shall announce its approval and may also prescribe the period of time for implementation and any other rule.

In implementing the plan approved under the first paragraph, if the financial institution concerned is required to take any action relating to the following provisions, such provisions shall not be applicable, as the case may be:

(1) Section 237, Section 1117, Section 1119, Section 1145, Section 1185, Section 1220, Section 1222, Section 1224, Section 1225, Section 1226, Section 1238 and Section 1240 of the Civil and Commercial Code;

(2) Section 31, the second paragraph of Section 33, Section 52, the second paragraph of Section 54, Section 102, Section 107, Section 136(2), Section 137, Section 139, Section 140, Section 141, Section 146, Section 147 and Section 148 of the Public Limited Companies Act B.E. 2535 (1992);

(3) Section 114 and Section 115 of the Bankruptcy Act B.E. 2483 (1940), only to the extent relevant to transfer of property or any acts relating to property as a result of the merger or acquisition of business.

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In proceeding under the second paragraph, if any damage occurs to any party, the merging financial institutions or the acquiring financial institution, whether in whole or in part, shall be jointly liable to pay damages thereof.

Section 74. When the announcement of the approval of the Bank of Thailand has been made in accordance with Section 73, the financial institutions which are to merge, transfer or acquire of all or part of business shall hold a shareholder meeting to consider the merger, transfer or acquisition of business, to which meeting the provisions relating to the shareholder meeting held for a merger, transfer, or acquisition of business under the Civil and Commercial Code or the law on public limited companies, as the case may be, shall not apply.

For the shareholder meeting under the first paragraph, the financial institution shall suspend registration of share transfer upon the lapse of seven days after the date of the announcement of approval of the Bank of Thailand pursuant to Section 73 until the date of the shareholder meeting and a shareholder meeting shall be called. A notice of the shareholder meeting shall be sent to shareholders not less than seven days but not more than fourteen days in advance. The notice of the meeting shall be published in accordance with the rules prescribed in the notification of the Bank of Thailand.

In the meeting, if there are affirmative votes of at least three-fourths of the number of votes of the shareholders present at the meeting, it shall be deemed that such merger, transfer or acquisition of business is lawful.

Where a government agency or state enterprise holds shares in any financial institution in the amount of ninety percent or more, once the announcement of approval of the Bank of Thailand is made pursuant to Section 73, it shall be deemed that the approval of the Bank of Thailand is a resolution of the shareholder meeting, and the merger, transfer, or acquisition of business is lawful without the need to hold a shareholder meeting under the first paragraph.

No person shall file a bankruptcy lawsuit against the financial institution under Section 73 during the process of merger, transfer or acquisition of business as approved by the Bank of Thailand under Section 73.

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Section 75. For the financial institution proceeding in accordance with the first paragraph of Section 73, if there is a transfer of assets with collateral other than right of mortgage, right of pledge or right arising out of guarantee, which shall be vested in the transferee in accordance with Section 305 of the Civil and Commercial Code, such other collateral shall be vested in the merged financial institution or the acquiring financial institution, as the case may be.

Section 76. For the financial institution proceeding in accordance with the first paragraph of Section 73, if a lawsuit to enforce a claim is pending in court, the merged financial institution or the acquiring financial institution, as the case may be, shall assume the rights of the party in such case and may bring in new evidence or witnesses to object to the documents already adduced, cross-examine the witnesses already testifying, and to object to the evidence or witnesses already taken. In the event that the court has rendered a judgment to enforce such claim, the merged financial institution or the acquiring financial institution shall assume the rights of the creditor or debtor under such judgment.

Section 77. The transfer of all or part of the business with the approval of the Bank of Thailand can be done in accordance with the provisions of this Division, and a transfer of claims in connection with such transfer of business does not require giving any notice to debtors under Section 306 of the Civil and Commercial Code. The foregoing, however, shall not prejudice the rights of debtors to raise a defense under the second paragraph of Section 308 of the Civil and Commercial Code.

Section 78. Any financial institution wishing to dissolve or temporarily suspend its business shall obtain the prior approval of the Bank of Thailand, in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 79. The Bank of Thailand shall, upon granting approval under the provisions of this Division, report to the Minister for information without delay.

DIVISION 10

General Supervision

Section 80. No financial institution shall:

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(1) reduce its capital without permission of the Bank of Thailand. In such permission, the Bank of Thailand may prescribe rules on the capital reduction, and Section 1117, Section 1225 and Section 1226 of the Civil and Commercial Code and the first paragraph of Section 139 and Section 141 of the Public Limited Companies Act B.E. 2535 (1992), as the case may be, shall not apply.

(2) purchase or hold immovable properties, except for:

(a) those for reasonable use as business premises, or as places of residence or welfare for officers and employees of the financial institution as permitted by the Bank of Thailand. The Bank of Thailand may grant such permission with conditions.

(b) those acquired as a result of debt settlement, provision of security for credits granted, purchase of immovable property mortgaged to the financial institution at a public auction conducted pursuant to an order of the court or official receiver, provided that such immovable property shall be disposed of within five years from the date such immovable property was vested in the financial institution. Where necessary, the Bank of Thailand may extend the time for the disposal of such immovable property, whereby the Bank of Thailand may prescribe any condition.

(c) those immovable properties which are purchased or held by a finance company carrying on housing finance business or those purchased or held by a credit foncier company for the purpose of carrying on its business in accordance with the rules prescribed by the Bank of Thailand.

(3) take its own shares as collateral or take shares of a financial institution of the same type from another financial institution of the same type as collateral.

Section 81. A financial institution shall notify the Bank of Thailand in writing within 15 days from the date of the occurrence of the following cases:

(1) amendment to its Memorandum of Association or Articles of Association; or

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(2) change of its directors, executive directors, managers, or persons with power of management.

Section 82. For the purposes of inspection by the Bank of Thailand of financial institutions, a financial institution shall keep its information, accounts, documents, seals or other evidence pertaining to its business, assets and liabilities in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 83. If any financial institution fails to operate financial institution business licensed in the volume to be normally operated by a financial institution in accordance with the rules prescribed in the notification of the Bank of Thailand, the Bank of Thailand may order such financial institution to operate the business in accordance with the said rules. In this regard, conditions and time period may also be prescribed. If the financial institution fails to operate as directed by the Bank of Thailand, the Bank of Thailand may order the closure of business of such financial institution.

When the Bank of Thailand orders the closure of business under the first paragraph, the Bank of Thailand shall propose to the Minister to revoke the license of such financial institution and such financial institution shall be liquidated.

CHAPTER 4

EXAMINATION OF FINANCIAL INSTITUTIONS

Section 84. For a financial institution to have a good management system, the Bank of Thailand shall have the authority to prescribe in its notification that a financial institution shall set up various committees, and prescribe the composition, qualifications and authorities and duties of the said committees.

Section 85. The Bank of Thailand shall have the authority to appoint its officials or outsiders as the financial institution inspectors to examine the business, assets and liabilities of a financial institution, its parent company, subsidiaries or affiliates, and companies in its financial business group, including debtors or related persons of such financial institution in general or in specific case.

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The financial institution inspectors shall have authorities and duties to:

(1) order any director, officer or employee of the financial institution, auditor of the financial institution and any person collecting or processing data of the financial institution either by employing computer system or any other device, to testify concerning the business, assets and liabilities of the financial institution, or to deliver copies of, or adduce, information, accounts, documents, seals or other evidence;

(2) enter business premises of the financial institution or places of business of providers of business services supporting the financial institution in order to examine the compliance by the financial institution with this Act;

(3) enter any premises for inspection in case there is a reason to suspect that a business operation in violation of this Act is being carried out, or there are evidence or documents relating to such act, during the time between sunrise and sunset or during the business hours of such premises. After so entering and inspecting, if the inspection cannot be finished it may continue into the night or outside business hours of those premises upon permission of the Bank of Thailand;

(4) seize or attach properties, documents or things connected with the commission of an offense under this Act for examination or prosecution purposes. An order for the seizure or attachment shall state the reason, necessity and rights of the person subject to such seizure or attachment;

(5) enter business premises of the parent company, a subsidiary, affiliate and company in the financial business group of that financial institution to examine the condition or operation, and to order a related person to testify, submit copies of, or adduce, information, accounts, documents, seals or other evidence concerning the business, assets and liabilities;

(6) enter business premises of a debtor or related person of the financial institution to examine the condition or operation, and to order the related person to testify, adduce information, accounts, documents, seals or other evidence concerning the business, assets and liabilities in case there is reasonable doubt that

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the financial institution violates Section 48, Section 49, Section 50, Section 66 or it is reasonable to believe that there is an offence committed dishonestly in business operation of the financial institution.

In the performance of duties of a financial institution inspector under the first paragraph, the financial institution inspector shall have the power to delegate his authority to any person to assist him in doing so.

The financial institution inspector shall report the inspection under the first paragraph to the Bank of Thailand in accordance with the form prescribed in the notification of the Bank of Thailand.

Section 86. In the performance of duties of the financial institution inspector and the person under the third paragraph of Section 85, all persons concerned shall facilitate them as may be appropriate.

Section 87. In the performance of duties under Section 85, a financial institution inspector shall produce to the persons concerned an identification card issued by the Bank of Thailand.

The financial institution inspector identification card shall be in the form prescribed in the notification of the Bank of Thailand.

Section 88. The financial institution inspectors shall be the officials under the Penal Code.

CHAPTER 5

RECTIFICATION OF CONDITION OR OPERATION OF FINANCIAL INSTITUTIONS

Section 89. In the event that a financial institution, its director, manager or person with power of management violates, or fails to act in accordance with, the provisions of this Act, or the prescriptions or notifications issued by virtue of this Act, or the conditions prescribed in the license, the Bank of Thailand shall have the authority to:

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(1) issue written warning to the financial institution or persons concerned, requiring them to refrain from the act in violation of, or to comply with, this Act;

(2) order a prohibition of an act in violation of, or require the compliance with, this Act or the prescriptions or notifications issued by virtue of this Act or the conditions prescribed in the license.

(3) order a removal of any or all directors, managers or persons with power of management, such order shall be regarded as a resolution of the shareholder meeting.

In case of removal of a director, manager or person with power of management pursuant to (3), if such person can prove that he was not involved in or responsible for the said act, the Bank of Thailand may reappoint such person to resume his former office.

Section 90. In the event that the condition or operation of a financial institution may cause damage to public interest, the Bank of Thailand shall have the authority to:

(1) order the financial institution to rectify the condition or operation;

(2) order the financial institution to decrease its capital, increase its capital, or both, within the time specified, which shall not be more than 90 days from the date the financial institution received the order. If such financial institution fails to act or is unable to comply therewith within the specified period, the order shall be deemed to be a resolution of the shareholder meeting as from the date after the due date in such order, except where there is an urgent need to maintain the condition and operation of the financial institution, the Bank of Thailand may order the financial institution to decrease its capital, increase its capital, or both, immediately. Such an order shall be deemed a resolution of the shareholder meeting. In this regard, Section 1117, Section 1220, Section 1222, Section 1224, Section 1225 and Section 1226 of the Civil and Commercial Code and the second paragraph (2) of Section 136, Section 137, Section 139 and Section 141 of the Public

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Limited Companies Act B.E. 2535 (1992) shall not apply to the decrease or increase of capital or offering of shares in the increase of capital;

(3) order the financial institution to suspend its business operation entirely or partially for a temporary period within the time prescribed;

(4) order the financial institution to immediately remove any or all of its directors, managers or persons with power of management and appoint other persons to replace the persons so removed as deemed appropriate. Such an order shall be deemed a resolution of the shareholder meeting;

(5) order the control or closure of business of the financial institution.

The Bank of Thailand shall report the steps taken under the first paragraph to the Minister for information without delay. If the Bank of Thailand issues an order closing business under (5) of the first paragraph, it shall propose to the Minister for revocation of the license of such financial institution.

Section 91. A person whose employment is terminated due to the removal from the office of director, manager or person with power of management pursuant to Section 89(3) or Section 90(4) shall not be eligible to severance pay under the law on labor protection or the law on state enterprise labor relations, including any other right and benefit under the employment contract due to employment termination, except for the agreed rights and benefits under the law on provident funds.

Section 92. The following cases shall be deemed a condition or operation of a financial institution which may cause damage to public interest:

(1) The financial institution, any of its directors, managers or persons with power of management violates the order under Section 89(2).

(2) The financial institution, any of its directors, managers, or persons with power of management acts in violation of, or fails to comply with, Section 30, Section 33, Section 34, Section 48, Section 49, Section 50, Section 51, Section 57, Section 58, Section 59, Section 60, Section 61, Section 63 or Section 64.

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(3) The financial institution, any of its directors, managers, or persons with power of management fails to keep accounts showing the true results of operations and financial condition pursuant to Section 66, or falsifies entry or commits forgery of accounts, documents, to the extent that it cannot be evaluated that such financial institution has a strong financial condition and operation in accordance with the rules concerning capital funds, assets, liquid assets, provisioning, assets classification and other matters under this Act.

(4) The financial institution suspends repayment that it is required to make;

(5) The financial institution incurs loss on operation and the Bank of Thailand has a reason to expect that such financial institution will not be able to maintain the capital funds as required by law, regardless of whether or not it is the case under Section 96.

Section 93. Any financial institution that suspends repayment that it is required to make shall notify the Bank of Thailand of such suspension together with reasons immediately and shall be prohibited from transacting any business except with the written approval of the Bank of Thailand.

The Bank of Thailand shall appoint a financial institution inspector to investigate the incident under the first paragraph, and, upon receipt of the investigation report from the financial institution inspector, the Bank of Thailand shall be empowered to order that the financial institution be placed under control, to order closure of business of the financial institution or give instructions as it deems appropriate.

If the Bank of Thailand orders the closure of business under the second paragraph, it shall propose to the Minister to revoke the license of such financial institution.

Section 94. No financial institution shall make payment of money, property or remuneration which will cause the capital funds to be lower than the capital funds required to maintain under Section 30 in the following cases:

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(1) to make payment of money or any other property to shareholders as capital distribution;

(2) to make payment of management fee or any other fringe benefit which is not normal wage, to any director, manager or person with power of management of the financial institution.

The Bank of Thailand may permit a financial institution to repurchase, redeem, release, or acquire shares or interests as a shareholder that will result in a reduction of financial burdens or improvement of the financial condition of that financial institution.

Section 95. If any financial institution has the remaining capital funds lower than the capital funds required to maintain under Section 30, such financial institution shall submit a plan for rectification of its condition and operation to the Bank of Thailand for approval in accordance with the following rules:

(1) The plan shall be submitted within sixty days from the date the finance institution knows of the same;

(2) The plan under (1) shall contain at least the following particulars:

(a) procedure to be implemented to bring the capital funds to the sufficient level;

(b) level of capital funds expected to be maintained in each quarter during the period of the plan;

(c) businesses plan; and

(d) completion period of the plan which shall not be more than one year from the date the financial institution knows that its capital funds are below the funds required to be maintained under Section 30.

Upon receiving the plan, the Bank of Thailand shall consider approving or rejecting the same within 30 days from the date of its receipt thereof, and shall notify the

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financial institution of such approval or rejection within such time. In this respect, any condition or time clause may be imposed.

If the financial institution fails to submit the plan within the time under (1) or no approval is given to the plan, or the financial institution fails to implement the plan or takes steps not in accordance with the plan approved or the condition or time clause prescribed by the Bank of Thailand under the second paragraph, the Bank of Thailand shall have the authority to order the financial institution to undertake any act as deemed appropriate or to order closure of business of such financial institution.

If the Bank of Thailand orders the closure of business under the third paragraph, it shall propose to the Minister to revoke the license of such financial institution.

Section 96. If a financial institution maintains the capital funds less than sixty percent of the ratio prescribed in Section 30, the Bank of Thailand shall order that such financial institution be placed under control, except where the Bank of Thailand considers that such order of control may severely affect or damage the economic system as a whole, or the financial institution shall take steps to quickly rectify so that the capital funds shall not be less than the criteria prescribed by law, the Bank of Thailand may not give the order of control of such financial institution.

In addition to the steps taken under the first paragraph, the Bank of Thailand may order that such financial institution dissolve and liquidate its subsidiary if it appears that the assets of the subsidiary are not sufficient for its liabilities, or the subsidiary has been unable to repay debts as usual for a consecutive period of more than three months, or may give any other order as deemed appropriate by the Bank of Thailand.

Section 97. If a financial institution maintains its capital funds less than thirty-five percent of the ratio prescribed in Section 30, the Bank of Thailand shall issue an order closing the business of such financial institution, except where the Bank of Thailand considers that such order will severely affect or damage the economic system as a whole, the Bank of Thailand may not give the order of closure of business of such financial institution.

If the Bank of Thailand orders the closure of business under the first paragraph, it shall propose to the Minister to revoke the license of such financial institution.

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Section 98. When the Bank of Thailand orders the closure of business of any financial institution under Section 90(5), Section 93, Section 95 or Section 97 and the Minister already revokes the license, such financial institution shall be liquidated.

Section 99. After the Bank of Thailand orders the financial institution to do any act, or receives a report on the financial institution under this Chapter, it shall report the same to the Minister for information without delay.

CHAPTER 6

TAKING OVER CONTROL OF FINANCIAL INSTITUTION

Section 100. In this Chapter:

“Deposit Protection Agency” means the Deposit Protection Agency under the law on deposit protection agency.

Section 101. After the Bank of Thailand has given an order for a financial institution to be placed under control, the Bank of Thailand shall notify the Deposit Protection Agency and such financial institution of its order in writing. Notice of the order shall be posted in a conspicuous place at the office of such financial institution and shall be published in the Government Gazette and in any media in accordance with the rules prescribed in the notification of the Bank of Thailand.

In case the financial institution in the first paragraph is a listed company in the Stock Exchange, the Bank of Thailand shall also notify the Stock Exchange of such order in writing.

Section 102. After the Bank of Thailand has given an order for a financial institution to be placed under control, the Bank of Thailand shall announce an appointment of a financial institution control committee, consisting of a chairman and other committee members of not less than two members but not more than four members, provided that at least one committee member shall be nominated by the Deposit Protection Agency.

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If the chairman is unable to perform his duty, the Bank of Thailand shall announce an appointment of any committee member to act in his place.

The meeting resolution shall be decided by a majority of votes. One committee member shall have one vote. In case of tie, the chairman of the meeting shall vote as a casting vote.

Section 103. Members of the financial institution control committee must have the same qualifications and must not have the same prohibited characteristics as those of the directors of financial institutions under Section 24, and must have no conflict of interest with their authorities and duties as members of the financial institution control committee.

The financial institution control committee members shall have the same authorities as the directors of financial institutions.

Section 104. After the Bank of Thailand has given the notice of the order of control to a financial institution, the directors, officers and employees of the financial institution shall be prohibited from continuing the conduct of business of that financial institution, unless otherwise authorized by the financial institution control committee.

The financial institution control committee shall be empowered to appoint one or several financial institution control officers to do any act. The financial institution control committee shall have the authorities and duties to carry on the business in all respects of the financial institution placed under control. The chairman of the committee shall be the representative of such financial institution.

The directors, officers and employees of the controlled financial institution shall:

- (1) manage in order to protect and maintain assets and benefits of the financial institution;
- (2) report the business and surrender assets together with information, accounts, documents, seals or other evidences related to the business

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and assets of the financial institution to the financial institution control committee without delay.

A person possessing properties or documents of the financial institution shall notify the financial institution control committee of his possession without delay.

Section 105. In case the financial institution control committee considers that the deposits of the controlled financial institution have unreasonably high and unjust interest, the financial institution control committee shall, with the approval of the Deposit Protection Agency Board, be authorized to decrease the rate of such interest, provided that it shall be announced to depositors and the decrease in interest rate shall be commenced after the expiration of seven days from the date of announcement.

Section 106. In case the financial institution control committee considers that the contractual obligations of the controlled financial institution exceed the benefits receivable, the financial institution control committee may enter into an agreement with the property owner, contractual party or person concerned to reduce such obligations.

Section 107. In case the financial institution control committee considers that the management employment agreement of the controlled financial institution has inappropriate conditions or stipulates unreasonably high remuneration or rights and benefits, or the controlled financial institution suffers damage from the management or omission to perform duty of the financial institution executives, the financial institution control committee shall be authorized to terminate such executives' employment, suspend or reduce payment of remuneration or other rights and benefits to such executives.

Section 108. In case the financial institution control committee considers that it is appropriate that the business of the financial institution be merged or transferred, in such merger or transfer of business, the provisions of Division 9 Merger, Transfer and Dissolution of Business of Chapter 3 shall apply *mutatis mutandis*. The resolution of the financial institution control committee shall be deemed as a resolution of the shareholder meeting and the financial institution control committee shall be authorized to act in place of the board of directors of such financial institution.

Section 109. The financial institution control committee shall, within one hundred and twenty days after the date of the order of appointment of the financial

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institution control committee, report to the Bank of Thailand as to whether a financial institution placed under control should be allowed to continue its business operation, with financial information and supporting reasons, unless relaxation has been granted by the Bank of Thailand.

If the financial institution control committee deems it appropriate to allow the financial institution to continue its business operation, the financial institution control committee shall propose a plan for rehabilitation of such financial institution to the Bank of Thailand. The plan for rehabilitation of the financial institution shall contain at least the following particulars:

- (1) procedure to implemented to bring the capital funds to the sufficient level;
- (2) level of the capital funds to be maintained in each quarter;
- (3) businesses plan;
- (4) completion period of the plan which shall not be more than one year from the date which the financial institution control committee reports to the Bank of Thailand under the first paragraph;
- (5) plan for merger or transfer of business (if any).

When the Bank of Thailand has received the report from the financial institution control committee under the first paragraph, the Bank of Thailand shall report the same to the Minister for information without delay.

Section 110. If the financial institution control committee reports to the Bank of Thailand that the financial institution placed under control should be allowed to continue its business operation, the Bank of Thailand shall give an order approving or disapproving such report within fifteen days from the date of receipt of the report from the financial institution control committee.

If the Bank of Thailand approves the report of the financial institution control committee pursuant to the first paragraph, the plan for rehabilitation of the financial

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institution shall be implemented as proposed by the financial institution control committee. In such case, the control order may be revoked and the revocation of the order shall be published in the Government Gazette and in any media in accordance with the rules prescribed in the notification of the Bank of Thailand.

If the Bank of Thailand gives an order disapproving the report of the financial institution control committee or the plan for rehabilitation of the financial institution is unable to proceed for whatever reason, the Bank of Thailand shall order closure of business of such financial institution.

After the Bank of Thailand orders closure of business under the third paragraph, it shall propose to the Minister to revoke the license of such financial institution.

Section 111. In the event that the financial institution control committee reports that the financial institution placed under control is unable to continue its business operation, the Bank of Thailand shall then order closure of business of such financial institution and publish such order in the Government Gazette and in any media in accordance with the rules prescribed in the notification of the Bank of Thailand.

After the Bank of Thailand orders closure of business under the first paragraph, it shall propose to the Minister to revoke the license of such financial institution.

Section 112. When the Bank of Thailand has ordered closure of business of any financial institution under the third paragraph of Section 110 or the first paragraph of Section 111 and the Minister has already revoked the license, that financial institution shall be liquidated.

Section 113. In case a financial institution is placed under control or its license is revoked, the persons who bought debentures or other debt instruments or assignees of claims in debt of such financial institution after such incident shall be prohibited from offsetting the debentures, debt instruments or assigned claims against the debt that such person owes to the financial institution.

Section 114. For the purposes of taking over control of a financial institution under this Chapter, the financial institution control committee or the authorized financial institution control officer shall have the power to order any person to make a statement or

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to produce or deliver information, accounts, documents, seals or other evidences relating to the business and assets of the financial institution placed under control, within the time prescribed by the financial institution control committee or the financial institution control officer.

Section 115. Members of the financial institution control committee and the financial institution control officers shall receive such remuneration as prescribed by the Bank of Thailand.

Section 116. The expenses and remuneration in connection with the control of any financial institution shall be paid out of the assets of that financial institution.

Section 117. The provisions of Chapter 3 Supervision of Financial Institutions, except for Division 8 Preparation of Accounts, Reporting and Auditors, shall not apply to a financial institution during the period of being controlled under this Chapter.

Section 118. After the Bank of Thailand has given the order to the financial institution to do any act, or received a report on the financial institution under the provisions of this Chapter, the Bank of Thailand shall report the same to the Minister for information without delay.

CHAPTER 7

SUPERVISION OF SPECIALIZED FINANCIAL INSTITUTIONS

Section 119. Specialized financial institutions are:

(1) a state financial institution established under a specific law;
and

(2) a juristic person established under a specific law as prescribed in the notification of the Minister.

Section 120. For the purposes of efficient supervision of the financial institution system, the minister in charge under the law on the establishment of a

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specialized financial institution may entrust the Bank of Thailand to perform all or any of the following duties which fall under the authorities and duties of the minister in charge as provided by the law:

(1) to generally supervise the business of such specialized financial institution;

(2) to give an order for clarification of facts and giving of opinion, as well as to appoint persons to examine and report about the business or properties of the specialized financial institution;

(3) to appoint or remove any person as required by the law, as well as to fix remuneration or any other benefit for such person;

(4) to lay down policy guideline for the specialized financial institution to proceed or follow; and

(5) to order the specialized financial institution to perform or omit to perform an act of the specialized financial institution which is contrary to the policy of the government or the resolution of the council of ministers.

In supervising the specialized financial institution pursuant to the first paragraph, the Bank of Thailand may, with the approval of the Minister, prescribe in its notification additional rules for compliance by the specialized financial institution or requirement that any provision of this Act shall apply to such specialized financial institution.

CHAPTER 8

PENAL PROVISIONS

Section 121. Any person who undertakes the commercial banking business, finance business, or credit foncier business without a license shall be subject to imprisonment for a term of two years to ten years and a fine of two hundred thousand baht to one million baht.

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Section 122. Any financial institution which violates or fails to comply with Section 11 shall be subject to a fine of not more than one hundred thousand baht and a further fine of not more than one thousand baht per day throughout the continuation of such violation.

Section 123. Any person who violates or fails to comply with Section 12 shall be subject to imprisonment for a term of not exceeding one year or a fine of not more than one hundred thousand baht or both, and a further fine of not more than one thousand baht per day throughout the continuation of such violation.

Section 124. Any financial institution which violates or fails to comply with Section 13, the first paragraph of Section 15, Section 37, Section 81 or Section 82 or violates or fails to comply with notifications, regulations or rules prescribed under the second paragraph of Section 15, the first paragraph of Section 26, Section 37 or Section 82, shall be subject to a fine of not more than three hundred thousand baht and a further fine of not more than three thousand baht per day throughout the continuation of such violation or until rectification has been made.

Section 125. Any financial institution which violates or fails to comply with Section 20, the first paragraph of Section 21, Section 22, Section 38, the first paragraph of Section 40, Section 41, Section 44, Section 47 or Section 84 or violates or fails to comply with notifications, regulations or rules prescribed under Section 38, Section 39, the second paragraph of Section 40, Section 41, Section 46, Section 47 or Section 84, shall be subject to a fine of not more than five hundred thousand baht and a further fine of not more than five thousand baht per day throughout the continuation of such violation or until rectification has been made.

Section 126. Any person who violates or fails to comply with Section 14, Section 54 or Section 56 or the parent company of a financial institution that violates Section 55, shall be subject to imprisonment for a term of six months to three years or a fine of sixty thousand baht to three hundred thousand baht or both, and a further fine of not exceeding three thousand baht per day throughout the continuation of such violation, as the case may be.

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Section 127. Any person who violates or fails to comply with the second paragraph of Section 26, shall be subject to a fine of sixty thousand baht to three hundred thousand baht and a further fine of not exceeding three thousand baht per day until rectification has been made.

Section 128. Any financial institution which violates or fails to comply with Section 16, Section 24, the first paragraph of Section 25, Section 29, Section 30, Section 31, Section 32, Section 34, Section 35, Section 36, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 68, Section 71, the first paragraph of Section 73, Section 74, Section 78, Section 80, Section 93, Section 94 or Section 95, or violates or fails to comply with the notifications, regulations, rules, conditions or orders prescribed under Section 9, the first paragraph of Section 10, Section 16, Section 29, Section 30, Section 31, the first paragraph of Section 32, Section 33, Section 34, Section 35, Section 36, Section 42, Section 43, Section 48, Section 49, Section 50, Section 51, Section 58, Section 59, Section 60, Section 61, Section 62, Section 63, Section 64, Section 66, Section 67, Section 71, the first paragraph of Section 73, the second paragraph of Section 74, Section 78, Section 80, Section 89, Section 90 (1) (3) and (4), Section 95 or Section 96 shall be subject to a fine of not exceeding one million baht, and a further fine of not exceeding ten thousand baht per day throughout the continuation of such violation or until rectification has been made.

Section 129. In case there is violation of Section 20, Section 21, Section 22, Section 34, Section 48, Section 49, Section 50 or Section 59, as the case may be, where the financial institution can prove that it has examined the related persons with care but cannot know and prevent the occurrence of violation, it shall be deemed that the financial institution has not committed the offence under such Sections.

Section 130. Any person who violates or fails to comply with rules prescribed under Section 56 or Section 57 shall be subject to a fine of not exceeding one million baht, and a further fine of not exceeding ten thousand baht per day throughout the continuation of such violation or until rectification has been made.

Section 131. Any person who violates or fails to comply with Section 104, or fails to comply with the order of the financial institution control committee or the financial institution control officer under Section 114, shall be subject to imprisonment for a term of not exceeding three years or a fine of not exceeding three hundred thousand baht

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or both, and a further fine of not exceeding three thousand baht per day throughout the continuation of such violation.

Section 132. In case the offender under Section 121 or Section 123 is a juristic person, a director, manager or person with power of management of such juristic person shall be liable to the punishment provided for such offence, unless it can be proven that he had no part in the commission of such offence.

Subject to Section 139, in case the financial institution commits an offence under Section 122, Section 124, Section 125 or Section 128, a director, manager or person with power of management of such financial institution shall be liable to the punishment provided for such offence, unless it can be proven that he had no part in the commission of such offence.

Section 133. In the case of an offence under Section 122, Section 124, Section 125, Section 128 and the second paragraph of Section 132, if the offender has not been prosecuted in court or the offence has not been settled out of court under Section 156 within two years from the date the Bank of Thailand found out such offence or within five years from the date of the commission of offence, such offence shall be barred from prosecution by way of prescription.

Section 134. Any person who makes a false statement to the financial institution inspector or the financial institution control committee, which is likely to cause damage to other person or the public shall be liable to imprisonment for a term of not exceeding six months or a fine of not exceeding sixty thousand baht or both.

Section 135. Any person who obstructs or fails to comply with an order of the financial institution inspector, the financial institution control committee or the financial institution control officer in the performance of their duties under this Act shall be liable to imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

Section 136. Any person who fails to facilitate the financial institution inspector, person under the third paragraph of Section 85, the financial institution control committee or the financial institution control officer in the performance of their duties under

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this Act shall be liable to imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht or both.

Section 137. Any person who removes, damages, destroys or renders useless any seal or mark which the financial institution inspector, the financial institution control committee or the financial institution control officer stamped or affixed on anything shall be liable to imprisonment for a term of not exceeding three years or a fine of not exceeding three hundred thousand baht or both.

Section 138. Any person who damages, destroys, conceals, takes away, causes the loss or renders useless any property or document which the financial institution inspector, financial institution control committee or financial institution control officer seized, attached, kept or ordered to be sent as evidence or for enforcement of law, whether the competent officer has kept such property or document by himself or ordered such person or other person to send or to keep it, shall be liable to imprisonment for a term of six months to three years or a fine of sixty thousand to three hundred thousand baht or both.

Section 139. In case any financial institution violates or fails to comply with Section 36, Section 50, Section 66, Section 80, Section 93, Section 94 or Section 95, or violates or fails to comply with notifications, regulations, rules or orders prescribed under the first paragraph of Section 9, the first paragraph of Section 10, Section 33, Section 36, Section 50, Section 66, Section 71, Section 80, Section 90 or Section 95, a director, manager or person with power of management of such financial institution shall be liable to imprisonment for a term of not exceeding one year or a fine of five hundred thousand to one million baht or both, unless it can be proven that he had no part in the commission of such offence.

Section 140. Any director, manager or person with power of management of a financial institution, who dishonestly deceives the public by assertion of falsified statement or concealment of facts which should be revealed to the public and, by such deception, obtains property from the public who have been deceived or from a third person, or causes the public so deceived or a third person to execute, revoke or destroy a document of rights, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million baht.

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Section 141. Any director, manager or person with power of management of a financial institution, who has been entrusted to manage the property of the financial institution or the property of which the financial institution is a co-owner, dishonestly commits an act in breach of his duty by any mean, causing damage to the benefit as a property of the financial institution, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million baht.

Section 142. Any director, manager or person with power of management of a financial institution, who, being in possession of a property which belongs to the financial institution or of which the financial institution is a co-owner, dishonestly embezzles such property to himself or a third person, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million baht.

Section 143. Any director, manager or person with power of management of a financial institution, who takes away, damages, destroys, causes depreciation in value of, or renders useless, a property of which the financial institution has the duty to take care or which is in the possession of the financial institution, if it is committed in order to cause damage to another person or the public, shall be liable to imprisonment for a term of not exceeding five years and a fine of not exceeding five hundred thousand baht.

Section 144. Any director, manager or person with power of management of a financial institution, who, in order to prevent a creditor from receiving payment of debt in whole or in part, does any of the following acts, knowing that the creditor of the financial institution or creditor of other person who will avail himself of the rights of the creditor of the financial institution to enforce payment of debt from the financial institution, or who exercises or is likely to exercise his claims through court to enforce payment of debt, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million baht:

- (1) removal, concealment or transfer to another person, of property of the financial institution; or
- (2) making an entry in the account or doing any other act to indicate that the financial institution is indebted, which is not true.

Section 145. Any director, manager or person with power of management of a financial institution, who acts or omits to act in order to obtain any unlawful benefit for himself or other person, which causes damage to the financial institution, shall be liable to imprisonment for a term of five to ten years and a fine of five hundred thousand to one million baht.

Section 146. Any director, manager or person with power of management of a financial institution, who commits or permits the commission of the following acts, so as to deceitfully deprive the financial institution or its shareholders of their rightful benefits or to deceive any person, shall be liable to imprisonment of five to ten years and a fine of five hundred thousand to one million baht:

- (1) damaging, destruction, alteration, curtailment, or falsification of accounts, documents or collateral of, or concerning, the financial institution;
- (2) false entry or failure to enter significant statement in the accounts or documents of the financial institution; or
- (3) keeping books of accounts that are incomplete, incorrect, out-of-date or untrue.

Section 147. For an offence under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145 or Section 146, if the wrongdoer is an employee of the financial institution, such person shall be subject to the punishment provided for such offence.

Section 148. Any auditor, appraiser or specialist who performs audit work in order to give opinion on a financial statement not in compliance with the provisions of law on auditors or additional requirements as prescribed in the notification of the Bank of Thailand, or makes a false report, or violates or fails to comply with Section 69, Section 70, or Section 71, or dishonestly appraises the value of property, as the case may be, shall be liable to imprisonment for a term of not exceeding three years or a fine of not exceeding five hundred thousand baht, or both.

Section 149. Any person who causes a director, manager or person with power of management of a financial institution or its specialist, to commit an offence as

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provided in Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146, or Section 148, whether by telling, ordering, threatening, hiring, or by any other mean, shall be subject to the punishment provided for such offence.

Section 150. Any person who commits an act by any mean to assist or facilitate a director, manager or person with power of management of a financial institution, an auditor or a specialist of the financial institution, in committing an offence as provided in Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, whether before or at the time of the commission of the offence, shall be subject to the punishment provided for such offence, unless such person is not aware of such assistance or facilitation.

Section 151. The public prosecutor, when indicting the offences under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, Section 149 and Section 150, shall have the power to claim the property or the value thereof or compensation on behalf of the injured person, and the court fees shall be exempted.

Section 152. Where it appears that any person commits an offence under Section 140, Section 141, Section 142, Section 143, Section 144, Section 145, Section 146 or Section 148, Section 149 and Section 150, and the Bank of Thailand considers that a delay may cause damage to public interest, the Bank of Thailand shall have the power to order seizure or attachment of the property of such person, or the property which may be legally deemed to belong to such person, or the property which in the circumstances is reasonably believed to belong to such person, provided that the seizure or attachment of the property shall not be made longer than one hundred and eighty days, unless a lawsuit has been filed in court, in which case the order of seizure or attachment shall continue to be in force until the court orders otherwise. Where circumstances render it impossible to file a lawsuit within one hundred and eighty days, the court that has jurisdiction may extend the period of seizure or attachment as requested by the Bank of Thailand.

The Bank of Thailand shall have the power to appoint its officials to seize or attach the property pursuant to the first paragraph.

The procedures for the seizure or attachment of property and the fixing of necessary sum for living and support of family of the person whose property is subject to

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seizure or attachment pursuant to the first paragraph shall be in accordance with the rules prescribed in the notification of the Bank of Thailand.

Whoever destroys, removes, conceals, takes away, causes the loss or renders useless, transfers to other person or commits any act which causes damage to the property seized or attached under the first paragraph shall be liable to imprisonment for a term of not exceeding ten years and a fine of not exceeding one million baht.

Section 153. Where there are reasons to suspect that the person under Section 152 will flee the country, the Criminal Court, upon request of the Bank of Thailand, shall have the power to prohibit such person from going out of the country.

In case of urgent necessity, the Commissioner-General of the Office of the Royal Thai Police, upon request of the Governor of the Bank of Thailand or the person designated by the Governor of the Bank of Thailand, shall have the power to give an order prohibiting the person under Section 152 from going out of the country on a temporary basis for a period of not more than fifteen days until the Criminal Court orders otherwise.

Any person who violates the order of the Criminal Court under the first paragraph or the order of the Commissioner-General of the Office of the Royal Thai Police under the second paragraph or the person who gives assistance to such person shall be liable to imprisonment for a term of not exceeding ten years and a fine of not exceeding one million baht.

Section 154. Whoever, in the performance under the authorities and duties provided by law, or in giving assistance to the person performing under the authorities and duties provided by law, having acquired knowledge about the affairs of a financial institution which, under normal circumstances, should not be disclosed, reveals such knowledge to other person, shall be liable to imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht, or both.

The provisions in the first paragraph shall not apply to the disclosure in the following cases:

- (1) disclosure in the performance of duty or for the purposes of investigation or court proceedings;

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(2) disclosure relating to the commission of an offence under this Act;

(3) disclosure to an auditor of such financial institution or agencies in the country and foreign country which have the authorities and duties to supervise such financial institution;

(4) disclosure for the purposes of performance of duty by the agencies in the country and foreign country which have the authorities and duties to supervise such financial institution or financial business according to an agreement made;

(5) disclosure for the purposes of improving the standing of the operation of such financial institution;

(6) disclosure for the purposes of granting of credits by the financial institution;

(7) disclosure of confidential information of a client of the financial institution which has already been disclosed to the public;

(8) disclosure of confidential information of a client of the financial institution upon consent of such client;

(9) disclosure to a company in the same financial business group; and

(10) disclosure for the purposes of compliance with the provisions of law.

Section 155. Any person who knows or acquires confidential information of a financial institution because such person has the power of management or is an officer and discloses such confidential information in a manner likely to cause damage to other person or the public, shall be liable to imprisonment for a term of not exceeding one year or a fine of not exceeding one hundred thousand baht, or both.

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The provision of the first paragraph shall not apply to the disclosure in cases under the second paragraph of Section 154.

Section 156. A committee appointed by the Minister shall be empowered to settle out of court any offence under Section 122, Section 124, Section 125, Section 128, the second paragraph of Section 132 and Section 139.

The committee appointed by the Minister under the first paragraph shall consist of three members, at least one of whom must be an investigating officer under the Criminal Procedure Code.

Where a case has been settled by the committee and the alleged wrongdoer has paid the fine in the amount and within the period of time specified by the committee, such case shall be final under the Criminal Procedure Code.

TRANSITIONAL PROVISIONS

Section 157. A commercial bank, finance company and credit foncier company which has been granted a license to undertake the commercial banking business, finance business, or credit foncier business, as the case may be, prior to the date this Act comes into force, shall be deemed to be a financial institution which has been granted a license to undertake business of such type under this Act.

Section 158. Any ministerial regulation, notification of the Ministry of Finance and notification, circular, order or regulation of the Bank of Thailand related to operation of commercial banking business, finance business or credit foncier business effective prior to the date this Act comes into force shall continue to take effect to the extent not contrary to or inconsistent with the provisions of this Act, until notifications or orders under this Act have been issued.

Section 159. Where any financial institution has been granted relaxation to invest in or purchase or hold shares in excess of the ratio under Section 34 prior to the date this Act comes into force, such financial institution shall be entitled to continue to hold or

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possess the shares under the conditions of the relaxation, but for a period not exceeding five years from the date this Act comes into force.

Where any financial institution has been granted relaxation for granting credits, investment, undertaking obligation, or conducting transactions similar to granting of credits in excess of the ratio under Section 50 prior to the date this Act comes into force, such financial institution may continue to grant credits, make investment, undertake obligation or conduct transactions similar to granting of credits under the binding contracts until completion of the period of performance of obligations as provided in the contracts.

Where any financial institution has granted credits, made investment, undertaken obligation, or conducted transactions similar to granting of credits to any person and related persons of such person in aggregate more than the ratio prescribed under Section 49 or Section 50 prior to the date this Act comes into force, and such granting of credits, investment, undertaking of obligation liabilities, or conduct of transactions similar to granting of credits is not in violation of the law on commercial banking or the law on undertaking of finance business, securities business and credit foncier business then in force, such financial institution may no longer grant credits, make investment, undertake obligation, or conduct transactions similar to granting of credits to such person or related persons of such person and shall proceed to cause such granting credits, investment, undertaking obligation, or conducting transactions similar to granting of credits to be in accordance with the provisions of Section 49 or Section 50 without delay, but for a period not exceeding five years from the date this Act comes into force.

Any financial institution which has been granted relaxation to hold immovable property prior to the date this Act comes into force may continue to do so in accordance with the conditions of such relaxation.

Section 160. Any finance company which has already been granted a license prior to the date this Act comes into force may undertake businesses as already licensed.

Section 161. A company which does not undertake financial business but has been granted relaxation to hold shares in any financial institution in excess of the rate prescribed in Section 18 prior to the date this Act comes into force may continue to hold the shares of such financial institution and may purchase shares issued for capital increase

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so as to maintain the proportion of its shareholding before the date this Act comes into force. However, if certain of those shares have been disposed of, the company shall have the right to hold shares in excess of the prescribed rate equal to the amount of the remaining shares.

The company under the first paragraph shall not purchase shares of the financial institution in addition to the shares currently held by it, after the period of relaxation under the first paragraph.

Section 162. Where any person has held or possessed shares of any financial institution in excess of the rate prescribed in Section 18 as a result of the inclusion of shares held or possessed by related persons prior to the date this Act comes into force, and such holding or possession of shares of the financial institution is not in violation of the law then in force, such person may continue to hold or possess those shares. However, if certain of those shares have been disposed of, such person shall have the right to hold or possess the shares in excess of the prescribed rate equal to the amount of the remaining shares. Such person shall also cause the holding or possession of those shares to be in accordance with the provisions of Section 18 without delay but no later than five years from the date this Act comes into force.

Section 163. While the Deposit Protection Agency has not been established, if the provision of any Section of this Act prescribes the missions, authorities and duties of the Deposit Protection Agency, such missions, authorities and duties shall be vested in the Ministry of Finance until the establishment of the Deposit Protection Agency.

by **Countersigned**

General
Surayud Chulanont
Prime Minister

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Remarks: The reasons for promulgation of this Act are as follows: at present, the supervision and regulation of commercial banking business, finance business and credit foncier business is governed by the law on commercial banking and the law on finance business, securities business and credit foncier business, as the case may be, resulting in different supervision and regulation. However, the business operations of financial institutions should be of the same standard. In addition, Thailand earlier encountered severe economic crisis that directly impacted financial institutions and affected the confidence of the public and depositors in the overall financial institution system. Therefore it is appropriate to improve the measures of supervision and regulation of financial institutions to be more efficient and to improve the law on commercial banking and the law on finance business, securities business and credit foncier business and to consolidate them into one law so that the control and monitoring shall be of the same standard, as well as to amend the penal provisions for relevant offences to be more suitable. It is therefore necessary to enact this Act.

(Ref: Government Gazette, Volume 125, Part 27 Kor, Dated 5 February B.E. 2551 (2008))
