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Thailand  
Corporate  
Finance

## ***Thailand Standardises Laws on Financial Institutions***

### **Summary**

A new Financial Institutions Business Act B.E. 2551 (the "**Act**") has been approved by Thailand's National Legislative Assembly, and will become effective on 3 August 2008. The Act will replace the Commercial Banking Act B.E. 2505, and the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business B.E. 2522. The Act seeks to standardise the existing different regulations governing the business activities of various types of financial institutions such as commercial banks, finance and securities companies, credit foncier companies and specialised financial institutions. The financial institutions that will be covered by the Act are commercial banks, including subsidiaries and branches of foreign banks, finance companies and credit foncier companies.

### **Full Update**

The new Act contains provisions dealing with (i) the shareholding limit of individual investors in financial institutions, (ii) the shareholding restrictions of financial institutions in other financial institutions who conduct the same type of financial business, (iii) the Bank of Thailand's ("**BOT**") supervisory role over the operations of the entire group of financial institution as well as (iv) the BOT's right to step in, in case of a financial institution's failure to maintain its capital funds.

The scope of this client alert however is limited to two particular provisions which are specified below.

### ***Foreign Shareholding and Directorship***

Under the Act, generally a minimum of 75% of the total number of shares of a financial institution and a parent company of any financial institution (as well as the voting rights to the same) must be held by Thai nationals, with at least three-fourths of the board of directors being Thai nationals. However, if it is deemed appropriate, the new Act gives the BOT the discretion to allow up to 49% of the shares to be held by foreigners as well as the power to relax the requirement regarding the nationality of the directors provided always that not more than half of the total number of directors on the board of directors can be foreigners. Any other deviations to the foreign shareholding ratio and the number of foreign directors must be authorised by the Minister of Finance, acting upon the advice of the BOT, on a case by case basis. Such authorisation may be granted if it is deemed necessary to rectify the operational condition of any financial institution, strengthen the stability of any financial institution or for the stability of the financial institution system. These relaxations may be prescribed with any conditions. The above mentioned nationality requirements do not however apply to subsidiaries and branches of foreign banks operating in Thailand.

Pursuant to the Act, the appointment and re-appointment of directors, managers, authorised persons or consultants of financial institutions will also require approval from the BOT. In addition, the new Act reinforces the need for good governance among directors as well as spells out the obligations that the directors have to shareholders, depositors and holders of promissory notes issued to raise funds from the public, in respect of any damage incurred by the financial institution through not complying with instructions of the BOT or the financial institution inspector. Significantly, the burden of proof of innocence is shifted to the directors to show that they did not take part in the non-compliance or fraud.

## ***Restrictions on Financial Institutions Holding Shares in Companies***

The Act prohibits a financial institution covered by the Act from holding, whether directly or indirectly, shares in companies in excess of the following ratios:

- 20% of its total capital held in aggregate in shares in other companies;
- 5% of its total capital funds in shares held in any one company; and
- 10% of the total share capital of that company.

However, exceptions to the above mentioned restrictions may be granted by the BOT in cases where (subject to certain limitations):

- the financial institution in question holds the shares as a result of a debt restructuring, a debt settlement, a debt enforcement, a guarantee or security in respect of credit granted, or for the purpose of operating a business in support of its financial business operation; or
- such shareholding has already been approved by the BOT prior to the effective date of the Act in which case such holding may continue for a further period not exceeding 5 years.

Financial institutions that have obtained licenses for financial operations prior to the effective date of the Act are deemed as licensed financial institutions under the Act. According to the transitional provisions, all existing ministerial regulations, notifications of the Ministry of Finance as well as notifications and circulars of the BOT also remain in force until further changes are announced.

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