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Thailand's Payment Systems Act 2017: Electronic Payments and Bankruptcy

In October 2017, the Thai government published the Payment Systems Act in the *Government Gazette*, setting out the framework for a new licensing and registration regime to regulate electronic payment business operators and putting in place several provisions for a stable and reliable e-payment ecosystem. The Act is expected to facilitate the offering of many new and innovative payment services in Thailand. Operation of the new regime will depend on forthcoming regulations, which are yet to be issued, and it is necessary to await those regulations before offering any actionable commentary on that aspect of the Act. However, some other aspects of the Act, which have drawn less attention, have a significant effect and are very worthy of attention.

Electronic payments have been governed under multiple laws and layers of regulations which, until now, have lacked statutory provisions for finality of payment. This raises a concern that if a payment system participant enters into receivership or reorganization, transactions involving that participant could be canceled or reversed, which can affect other participants in the payment system; for example, where a recorded transfer is not funded or settlement fails. If the payments are for a large amount of money, this problem could spread even more broadly to other payment systems and other participants in them. In extreme scenarios, cancellations or reversals of high-value payments could present serious risks to the entire financial system affecting both banks and non-banks.

Protecting "Important" Payment Systems

The Act sets out provisions for dealing with this issue, which are applicable to participants in "important" payment systems, the security or stability of which can have an impact on the financial institution system or the financial system of Thailand. To be regarded as an important payment system, a system must:

1. be part of the main infrastructure of the country, trouble with or disruption of which would have a broad effect on the continuity of its participants' business; and
2. be a system that supports high-value transfers or that is used for clearing or settlement among its members.

Any payment systems established or operated by the Bank of Thailand (e.g., BAHTNET and the imaged check clearing system) are deemed to be important payment systems. Beyond those, the Minister of Finance has the authority, on the recommendation of the Bank of Thailand, to specify important payment systems in secondary legislation. Therefore, private-sector payment systems could also be designated as important, if specified in ministerial regulations, meaning that these provisions would also be

applicable to their participants.

The Act provides that, where a court accepts a reorganization petition in respect of a participant in an important payment system, or orders the participant into receivership, any of the participant's transfers, clearing, and settlement that were pending before the court order must continue until completion under the payment system rules, but not beyond the end of the date of the court order. The law makes it clear that such transactions cannot be reversed, modified, stopped, or suspended, and that statutory provisions for revocation of a fraudulent act or other act under the Civil and Commercial Code or the Bankruptcy Act cannot affect the validity of such a payment system's operations. Further, any cash, securities, or instruments that such a participant maintains in the payment system, must be protected, and must not be distributed to the participant's creditors without the Bank of Thailand's approval. Each of these measures is important to ensure that instructed transfers are made, and that settlement successfully occurs, despite a participant's bankruptcy. In that sense, it can help to contain what could otherwise be a contagion.

Protecting Customers of "Payment Service Providers"

For a similar purpose, the Act also sets out provisions for payment service providers that hold customer funds. "Payment service providers" under the Act will include providers of: (1) credit, debit, and ATM cards; (2) e-money; (3) electronic payment services to a seller, service provider, or creditor; (4) electronic money transfer services; and (5) other payment services that may affect the financial system or public interest, and others that may be specified by royal decree.

While current regulations already require certain categories of electronic payment business operators to establish separate bank accounts for holding customer funds, the Act expands on them.

Specifically, the Act protects customer funds held by a payment service provider from disposal or transfer under a court order, in the following circumstances:

1. where the service provider suspends its operations under the Payment Services Act or another law;
2. if a petition for reorganization is filed in respect of the payment service provider;
3. if a petition is filed in bankruptcy court in respect of the payment service provider; or
4. if the court orders the payment service provider into receivership.

Further, if a payment service provider is a judgment debtor in a civil case or is ordered into receivership, any customer funds that it holds will not be subject to attachment or execution, and will not be distributed to the payment service provider's creditors.

In the case of receivership, the Act provides that the Bank of Thailand will return customer funds to the customers, transfer the accounts to another payment service provider, and/or take other actions necessary to conclude business with the customer funds. Customers unrelated to the payment service provider will have priority over those that are related. Any remaining compensation due would be subject to regular bankruptcy proceedings.

The new Payment Services Act offers the possibility of many innovative services for customers in Thailand to enjoy. From a legal standpoint, however, perhaps the greatest achievement of the Act is the security and stability of payment finality and the protection of customer funds. 🏠