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First Peer-to-Peer Lending Regulation Issued by the Bank of Thailand

In recent years, peer-to-peer (P2P) lending technology has taken root in Asia, particularly in China, Singapore, and Indonesia, and the P2P market is continuing to expand significantly. The business model allows lenders and borrowers to link up via an online platform. This disrupts the traditional banking model that requires a financial institution to act as an intermediary. For individuals, this means that underbanked populations are able to secure loans where previously a lack of credit history or little access to financial service institutions posed considerable obstacles. For businesses, this can mean faster access to capital and a simplified process for reaching a broad base of potential investors.

As it has in other countries, P2P is expected to transform the lending business and reduce funding gaps in the Thai market. The Bank of Thailand (BOT) first announced their intention to regulate P2P lending in September 2018, and in January 2019 circulated a draft of the proposed regulations in order to seek opinions and comments from interested parties. This has roughly coincided with a precipitous decline in the P2P lending market in China, which underlines the importance of regulating this nascent industry. Thailand—like some of its fellow ASEAN members—has chosen to move ahead carefully and establish a sound regulatory framework at an early stage in the local sector’s development.

On April 29, 2019, the BOT issued Notification 4/2562 Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Businesses and Platforms. The notification took effect the following day.

The notification is Thailand’s first legislation relating to P2P lending, and it provides a number of parameters within which P2P platform providers and P2P lenders must operate. It defines a P2P platform provider as a person who provides an electronic system or network for P2P lending, and a lender as a natural or juristic person who offers a loan through an electronic system or network (excluding crowd-funding providers). Key provisions of the notification are below.

P2P Platform Provider

The BOT has devoted a good deal of attention to setting out the structure and activities of P2P platform providers. They have stipulated that a P2P platform provider must:

- ▶ not be a financial institution (including banks, although subsidiaries of banks are permitted);
- ▶ be a private company or public company incorporated in Thailand;
- ▶ have paid-in capital of at least THB 5 million; and
- ▶ have at least 75% of its total shares held by Thais.

Directors of the platform provider must be “fit and proper,” meaning that they must not have been involved in or accused of fraud or corruption, must not demonstrate a lack of quali-

cations or professional standards, and must be financially sound.

Custodians

Platform providers are prohibited from holding the money, property, and securities of lenders and borrowers, so a qualified custodian is required. Custodians must be either authorized custodians under Securities and Exchange Commission (SEC) regulations or authorized commercial banks (for escrow accounts) under BOT regulations.

Borrowers and Credit Limits

Under this notification, borrowers must be natural persons who:

- ▶ have the capability to perform debts;
- ▶ are not platform providers;
- ▶ are not directors or an authorized person of, or a major shareholder in, the provider; and
- ▶ have not already obtained personal loans from three lenders.

The notification also prescribes credit limits for obtaining loans, depending on the type of loan. For example, a loan for consumer purposes is subject to a credit limit that is contingent on the borrower’s income or cash inflow. If the average monthly income is less than THB 30,000, the credit limit cannot exceed 1.5 times the average monthly income or the cash inflow in the consumer’s deposit account. For borrowers whose average monthly income is THB 30,000 or more, the credit limit is five times the average monthly income or cash inflow in the consumer’s deposit account. In these cases, the average must be calculated from a period of six months or more. If the loan is for business purposes, the credit limit is set at THB 50 million.

In both cases, the interest rate for loans offered through a P2P lending platform must not exceed 15% per year, as laid out in the Civil and Commercial Code of Thailand.

Lenders

Unlike borrowers, lenders can be either natural or juristic persons. They must possess knowledge and understanding of loans and the risks associated with P2P lending platforms by conducting client suitability assessments before providing loans. Additionally, a lender must not be a platform provider. There are credit limits proposed for the lenders under the notification, but materially for individual lenders the amount should not exceed THB 500,000 within one year.

Regulatory Clarity

Prior to this enumeration by the BOT, the legal status of P2P lending activities was not consistent or clear-cut, with some types of P2P lending being strictly prohibited without a license from the BOT or the Securities and Exchange Commission of Thailand. With this P2P lending regulation—and the upcoming crowdfunding regulation that is expected to be issued by the SEC later this year—P2P lending businesses will be recognized and specifically regulated in Thailand.

It is hoped that this will lead to the sustainable growth of alternative finance in Thailand and will provide a more accessible option for consumers and entrepreneurs. As greater flexibility in how money flows to and from various sectors of society—coupled with sound regulation—prosperity and opportunity should become more open and available to previously marginalized individuals. Companies looking to get involved in working toward these goals should be sure they are compliant with the laws and regulations so that they can focus on making the promise of alternative finance a reality. 🏡