

COMMERCIAL BANKING ACT

B.E. 2505

BHUMIBOL ADULYADEJ, REX.,

Given on the 13th day of April B.E. 2505;

Being the 17th year of the Present Reign.

By Royal command of His Majesty King Bhumibol Adulyadej, it is hereby
proclaimed that:

Whereas it is deemed expedient to revise the law relating to commercial banking;

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent
of the Constituent Assembly in the capacity of Parliament, as follows:

Section 1. This Act shall be called the “Commercial Banking Act B.E. 2505”.

Section 2. This Act shall enter into force on and from the day following the date of its
publication in the Government Gazette.

Section 3. The “Commercial Banking Act BE. 2488” shall be repealed.

Section 3 bis.¹ This Act is a law concerning the restriction of the freedom in a
premise, the right in property of a person, and the freedom in operating a business or occupation
which is enacted by virtue of Section 35, paragraph two, Section 48, and Section 50, paragraph
two, of the Constitution of the Kingdom of Thailand.

Section 4.²In this Act,

“commercial banking” means the business of accepting deposits of money subject to
withdrawal on demand or at the end of a specified period and of employing such money in one or

¹ As amended by the Royal Proclamation Amending Commercial Banking Act, B.E. 2505 (1962) (No.4) B.E. 2541 (1998)

² As amended by Section 3 of the Commercial Banking Act (No.2), B.E. 2522

several ways such as : (a) granting of credits, (b) buying and selling of bills of exchange or any other negotiable instruments, (c) buying and selling of foreign exchange;

“commercial bank” means a bank licensed to undertake the business of commercial banking and includes a branch of a foreign bank licensed to carry on such business;

“limited public company” means a limited public company formed in accordance with the law on limited public companies;

“limited company” includes a limited public company;

“capital funds”³ means the sum of

(1) the paid-up capital, including premiums of share received by a commercial bank and money received by such commercial bank as a result of issuance of certificates representing the right to buy shares of such commercial bank;

(2) statutory reserve;

(3) reserves appropriated from net profits at the end of each accounting period in accordance with the resolution of the shareholder's general meeting or the regulations of such commercial bank, excluding reserves for diminution of the values of assets and reserves for repayment of debts;

(4) net profit after appropriation;

(5) reserves arising from assets revaluation, other reserves; and

(6) money which a commercial bank receives from issuing a long-term debt instrument with a term to maturity of over five years and with right ranked after ordinary creditor.

For the capital funds under (1), (2), (3) and (4), losses incurred in all previous accounting periods shall be deducted first and goodwill shall be deducted in accordance with the rules, procedures and conditions as prescribed by the Bank of Thailand.

The type, category and calculation of the capital funds under (5) or (6) shall be in accordance with the rules, procedures and conditions as prescribed by the Bank of Thailand.

For the capital funds under (1), (2), (3), (4), (5) and (6), the amount of money in the instrument under (6) of finance companies and other commercial banks which such commercial bank holds, and any assets, shall be deducted in accordance with the rules, procedures and

³ As amended by Section 3 of the Commercial Banking Act (No.3), B.E. 2535

conditions as prescribed by the Bank of Thailand;

“granting of credits” means lend money, buy, discount or rediscount bills, become a creditor upon having paid or ordered that an amount of money be paid on behalf of a customer, or become a creditor upon having paid in accordance with an obligation specified in a letter of credit;

“certificate of deposit”⁴ means a negotiable instrument issued by a commercial bank to a depositor as evidence of accepting deposits of money and as representation of the right of the holder of such negotiable instrument to have the money repaid at the end of a fixed period, with or without interest specified therein;

“financial institution”⁵ means:

(1) finance company, finance and securities company and credit foncier company under the law governing finance, securities and credit foncier businesses;

(2) other juristic person prescribed by the Minister as published in the Government Gazette.

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

Section 5⁶. Subject to the provisions of Section 5 quarter and Section 5 quinque, a commercial bank, except a branch of a foreign bank, shall be established only in the form of a limited public company and with a license granted by the Minister.

An application for a license shall contain such particulars as the Minister may prescribe and steps to form a limited public company may be taken only after approval of the Minister.

Section 5 bis.⁷ No person shall hold more than five per cent of the total amount of a commercial bank’s shares sold except in the case where shareholders are governmental agencies,

⁴ As amended by Section 4 of the Commercial Banking Act (No.3), B.E. 2535

⁵ As amended by Section 4 of the Royal Proclamation Amending Commercial Banking Act(No.4), B.E. 2541

⁶ As amended by Section 3 of the Commercial Banking Act (No.2), B.E. 2522

⁷ As amended by Section 3 of the Royal Proclamation Amending Commercial Banking Act (No.4) , B.E. 2541

state enterprises under the law on budget procedures, the Financial Institutions Development Fund under the law on the Bank of Thailand, or juristic persons established under a specific law. In the event that it is necessary to rectify the condition or operation of a commercial bank, the Minister, with the advice of the Bank of Thailand, shall have the power to permit the holding of shares as otherwise. Such permission may be granted with any condition.

Shares of a commercial bank held by the following persons or partnerships shall be regarded as shares held by the person under the first paragraph:

- (1) the spouse of the person under the first paragraph;
- (2) a minor child of the person under the first paragraph;
- (3) an ordinary partnership in which the person under the first paragraph or the person under (1) or (2) is a partner;
- (4) a limited partnership in which the person under the first paragraph or the person under (1) or (2) is a partner with unlimited liability or in which one or more of such persons is a partner or are partners with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;
- (5) a limited company in which the person under the first paragraph or the person under (1) or (2) or the partnership under (3) or (4) holds shares, in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold ; or
- (6) a limited company in which the person under the first paragraph or the person under (1) or (2) or the partnership under (3) or (4) or the limited company under (5) holds shares, in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold.

Section 5 ter⁸. No commercial bank shall transfer its shares to any person if such transfer will cause such person or any other person to hold shares in a percentage greater than that prescribed under Section 5 bis.

Whenever an invitation to subscribe for shares is made, a commercial bank shall

⁸
As amended by Section 4 of the Commercial Banking Act (No.2), B.E. 2522

specify in such invitation the total amount of shares which may legally be held by a person in accordance with Section 5 bis.

Section 5 quarter⁹. The ordinary shares and preference shares of a commercial bank shall be of the kind with name certificates, having a par value of not more than one hundred Baht per share and subject to no regulations of a commercial bank restricting transfer of shares, except for purposes of compliance with Section 5 bis or Section 5 quinqué or with the law on limited public companies.

Section 5 quinqué¹⁰. The amount of shares of a commercial bank held by persons of Thai nationality shall not be less than three-fourths of the total amount of shares sold and the number of its directors who are persons of Thai nationality shall not be less than three-fourths of the total number of directors. However, the Minister with the advice of the Bank of Thailand shall be, in the event where there is any necessity to rectify the condition or operation of any bank, empowered to authorize shareholding or directorship otherwise. Such relaxation may be prescribed with any condition.

Section 5 sex¹¹. Where it appears that an acquisition of shares causes any person to hold shares in a percentage greater than that prescribed in Section 5 bis, the holding of shares in excess of the prescribed percentage may not be set up against the commercial bank concerned by such person and such commercial bank shall not pay dividend or any other form of money as bonus to such person or allow such person to vote at a meeting of shareholders on account of the exceeding amount of shares.

Section 5 septem¹². For the purposes of compliance with Section 5 bis, Section 5 quinqué and Section 5 sex, a commercial bank shall examine its register of shareholders prior to

⁹ As amended by Section 4 of the Commercial Banking Act (No.2), B.E. 2522

¹⁰ As amended by Section 3 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2540

¹¹ As amended by Section 4 of the Commercial Banking Act (No.2), B.E. 2522

¹² As amended by Section 4 and Section 5 of the Commercial Banking Act (No.2), B.E. 2522 respectively

each distribution of dividend or any other form of money as bonus and prior to a meeting of shareholders, and inform the Bank of Thailand of the results of such examination pursuant to the particulars and within the period of time prescribed by the Bank of Thailand . In the case where any shareholder is found to hold shares in excess of the percentage prescribed in Section 5 bis, the commercial bank concerned shall notify such person to take steps to dispose of such exceeding amount of shares.

Section 5 octo¹³ . The provisions of Section 5 bis, Section 5 ter, Section 5 quarter, Section 5 quinque, Section 5 sex and Section 5 septem shall not apply to any commercial bank which is a branch of a foreign bank.

Section 6¹⁴ . A branch of a foreign bank can undertake the business of commercial bank only after having obtained a license from the Minister. Such license may be granted with conditions to be complied with.

The branch of a foreign bank licensed to carry on the business of commercial banking shall maintain assets in Thailand in accordance with the criteria regarding the amounts, types, procedures and conditions as prescribed by the Minister in the Government Gazette.

Assets required to be maintained in accordance with the second paragraph shall be acquired with (1) the money brought in from the head office and/or any other branches outside Thailand of such foreign bank, (2) various reserves, excluding reserves for diminution of the values of assets and reserves for repayment of debts, or (3) net profits of the branch in each accounting period which have been transferred to the account of the head office and which are not required to be remitted abroad; provided that all accumulated losses incurred in the previous accounting periods shall be firstly deducted.

In compliance with the provisions of this Act, the assets to be maintained in accordance with the second paragraph shall be considered as capital funds.

¹³ As amended by Section 4 and Section 5 of the Commercial Banking Act (No.2), B.E. 2522 respectively

¹⁴ As amended by Section 4 and Section 5 of the Commercial Banking Act (No.2), B.E. 2522 respectively

Section 7. A commercial bank, other than a branch of a foreign bank authorized to undertake the business of commercial banking, may establish a branch only with the authorization of the Minister. An application for such authorization shall contain particulars as prescribed by the Minister,¹⁵ and the authorization may be granted with or without conditions.

Section 7 bis¹⁵. In the case where any person intends to act on behalf of a foreign bank by setting up a representative office in the Kingdom of Thailand, or any commercial bank, other than a branch of a foreign bank, intends to establish a representative office, within or outside the Kingdom of Thailand, there must be the prior authorization of the Bank of Thailand. Such authorization may be granted with conditions to be complied with.

Section 7 ter¹⁶. A commercial bank authorized to establish its head office or branch office at any location shall not change the location of such office except with the permission of the Bank of Thailand. Such permission may be granted with conditions to be complied with.

Section 8. No person other than a commercial bank shall undertake the business of commercial banking.

Section 9. No person other than a commercial bank shall use, in the conduct of his business, the name or the business description of a “bank” or any other word or words having similar meaning.

Section 9 bis¹⁷. In addition to undertaking the business of commercial banking, a commercial bank may carry on any business which is connected with or incidental to commercial banking business or any business traditionally regarded as commercial banking practice, such as, the collecting of money against bills, giving of aval to bills, acceptance of bills, issuing letters of credit, or giving guarantees or, if permission is obtained from the Bank of Thailand, any other business of a similar nature; but it shall not carry on any other trade or business.

¹⁵ As amended by Section 6 and Section 7 of the Commercial Banking Act (No.2), B.E. 2522 respectively

¹⁶ As amended by Section 6 and Section 7 of the Commercial Banking Act (No.2), B.E. 2522 respectively

¹⁷ As amended by Section 6 and Section 7 of the Commercial Banking Act (No.2), B.E. 2522 respectively

Section 9 ter¹⁸. A commercial bank may accept deposits of money subject to withdrawal at the end of a specified period by 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 commercial bank which issues the certificate of deposit;
- (3) the date on which the certificate of deposit is issued;
- (4) the province where the certificate of deposit is issued;
- (5) an unconditional agreement to pay a sum certain in money including interest (if any);
- (6) a day of maturity;
- (7) the place of payment;
- (8) the name of the depositor, or a mention that it is payable to bearer;
- (9) the signature of the person authorized to sign on behalf of the commercial bank which issues the certificate of deposit.

Section 9 quarter¹⁹. The provisions of the Civil and Commercial Code Section 899 to Section 907, Section 911, Section 913 (1) and (2), Section 914 to Section 916, the first and the third paragraph of Section 917, Section 918 to Section 922, Section 925, Section 926, Section 938 to Section 942, Section 945, Section 946, Section 948, Section 949, Section 959, Section 967, Section 971, Section 973, Section 986, Section 994 to Section 1000, Section 1006 to Section 1008, Section 1010 and Section 1011 shall apply to certificates of deposit *mutatis mutandis*.

Section 10²⁰. A commercial bank shall maintain its capital funds in proportion to its assets, liabilities or contingent liabilities in accordance with the rules, procedures and conditions as prescribed by the Bank of Thailand with the approval of the Minister.

The prescription under the first paragraph shall be published in the Government

¹⁸ As amended by Section 6 of the Commercial Banking Act (No.3), B.E. 2535

¹⁹ As amended by Section 6 of the Commercial Banking Act (No.3), B.E. 2535

²⁰ As amended by Section 6 of the Commercial Banking Act (No.3), B.E. 2535

Gazette and if such prescription has the effect of increasing the relevant ratio, it shall not be operative until after the lapse of fifteen days from the date of its publication.

Section 11²¹. A commercial bank shall maintain a cash reserve in proportion to its deposits and/or borrowings as specified in Section 11 bis at not less than the ratio prescribed by the Bank of Thailand with the approval of the Minister.

The ratio prescribed in the first paragraph shall not be less than five per cent or more than fifty per cent of deposits and/or borrowings, as the case may be, and such prescribed ratio may relate to any one type or more of deposits and/or borrowings separately or in combination .

For the purpose of maintaining a cash reserve pursuant to the first paragraph, the Bank of Thailand may designate Thai Government securities to be included as part of such cash reserve.

Section 11 bis²². Deposits and/or borrowings, in which a commercial bank is required to maintain a cash reserve in proportion, are as follows;

- 1) total deposits;
- 2) demand deposits;
- 3) time deposits;
- 4) total borrowings;
- 5) each type of borrowings.

For the purpose of calculation of deposits or borrowings as specified in the first paragraph, the Bank of Thailand with the approval of the Minister may prescribe that the total of unused balances of overdrafts can be included as part of any one type of deposits or borrowings.

Section 11 ter²³. A commercial bank shall maintain liquid assets as specified in Section 11 quarter. in proportion to the total or each type of its deposits and/or borrowings at not less than the ratio prescribed by the Bank of Thailand with the approval of the Minister.

²¹ As amended by Section 8 of the Commercial Banking Act (No.2), B.E. 2522

²² As amended by Section 9 of the Commercial Banking Act (No.2), B.E. 2522

²³ As amended by Section 9 of the Commercial Banking Act (No.2), B.E. 2522

The ratio prescribed under the first paragraph shall not be less than five per cent or more than fifty per cent of the total or each type of its deposits and/or borrowings, as the case may be.

In the maintenance of liquid assets under the first paragraph, the Bank of Thailand may prescribe to maintain only some or all types of the liquid assets. In this regard, any ratio may be prescribed for each type of such assets.

Section 11 quarter²⁴. Liquid assets are;

- (1) cash;
- (2) deposits with the Bank of Thailand;
- (3) net deposits with other commercial banks;
- (4) unencumbered Thai Government securities;
- (5) unencumbered debentures or bonds which are guaranteed by the Ministry of Finance in respect of the repayment of principals and the payment of interests thereon; and
- (6) such other assets as may be prescribed by the Bank of Thailand with the approval of the Minister.

Section 11 quinque²⁵. The maintenance of a cash reserve in proportion to deposits and/or borrowings pursuant to Section 11 and the maintenance of liquid assets in proportion to the total or each type of deposits and/or borrowings pursuant to Section 11 ter., as the case may be, shall be in accordance with the rules, procedures and conditions as prescribed by the Bank of Thailand with the approval of the Minister.

The prescriptions under Section 11, the second paragraph of Section 11 bis. and the first paragraph of Section 11 ter. shall be published in the Government Gazette and if any such prescription has the effect of increasing the relevant ratio of the cash reserve or that of the liquid assets, it shall not be operative until after the lapse of fifteen days from the date of its publication.

²⁴ As amended by Section 9 of the Commercial Banking Act (No.2), B.E. 2522

²⁵ As amended by Section 9 of the Commercial Banking Act (No.2), B.E. 2522

Section 11 sex²⁶. In the case where it is necessary for the purpose of maintaining the stability of the domestic currency, the Minister shall have the power to prescribe commercial banks to maintain a special cash reserve at the Bank of Thailand at not less than the ratio prescribed by the Minister, in addition to the maintenance of a cash reserve pursuant to Section 11.

The ratio prescribed under the first paragraph shall be designated in proportion to all or each type of deposits and/or borrowings as specified in Section 11 bis, but only to the extent of the increased amount from the total of such deposits and/or borrowings at the end of any given day. Such prescription shall be published in the Government Gazette.

Section 12²⁷. No commercial bank shall:

- (1) reduce its capital without an authorization of the Minister;
- (2) in favor of any of its directors, grant credits, guarantee any debts, or accept, give aval to, or intervene for honor of any bills which the director is a drawer, a maker or an endorser;
- (3) accept its own shares as security or accept a commercial bank's shares from any other commercial banks as security;
- (4) purchase or permanently hold immovable properties except:
 - (a) for use as the premise for the business of the commercial bank or as facilities for its officers and employees with the approval of the Bank of Thailand. Such approval may be granted with any condition; or
 - (b) those acquired as a result of a debt settlement or a guarantee in respect of credit granted or as a result of the purchase of an immovable property mortgaged to the commercial bank at an auction conducted pursuant to an order of a court or an official receiver;
- (5)²⁸ purchase or hold shares of any limited company in an amount exceeding ten per cent of the total amount of such company's shares sold, or purchase or hold shares at an aggregate value exceeding the ratio to the total capital funds or any one or several types of capital funds in

²⁶ As amended by Section 9 of the Commercial Banking Act (No.2), B.E. 2522

²⁷ As amended by Section 5 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

²⁸ As amended by Section 8 of the Commercial Banking Act (No.3), B.E. 2535

accordance with the rules, procedures and conditions as prescribed by the Bank of Thailand, unless authorized by the Bank of Thailand. Such authorization may be given with any condition;

(6) purchase or hold shares of any other commercial banks, except those acquired as a result of a debt settlement or a guarantee in respect of credit granted, provided that such shares shall be disposed of within six months from the date of acquisition or where such acquisition has been permitted by the Minister with the advice of the Bank of Thailand, such permission may be granted with any condition;

(7) pay money or give any property to any of its directors, officers or employees as commission or remuneration for or by reason of any transaction or business of the commercial bank other than gratuities, salaries, bonuses and other allowances which may normally be paid to them;

(8) sell or give any immovable property or movable properties with an aggregate value, separately or in combination, exceeding the value prescribed by the Bank of Thailand to any of its directors or purchase any property from any of its directors, in which including persons or partnerships that are related to the directors as specified in Section 12 bis, except with the approval of the Bank of Thailand.

(9) do any act which may cause damage to the national economy or the public interest, constitute taking unfair advantage of its customers or the relevant person, or create obstacles to the development of or the competition in the financial institution system, or result in unfair economic or monopolistic barriers as prescribed by the Bank of Thailand with the approval of the Cabinet and published in the Government Gazette.

Section 12 bis²⁹. The granting of credits or guaranteeing of any debt in favor of any of the following persons or partnerships, or the accepting of any bill, the giving of aval to or the intervening for honor of any bill which any of the following persons or partnerships is a drawer, maker or an endorser shall be deemed to be the granting of credits or guaranteeing of any debt or the accepting, the giving of aval or the intervening for honor for the benefit of the director under Section 12 (2):

²⁹
As amended by Section 6 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

- (1) the spouse of the director;
- (2) a minor child of the director;
- (3) an ordinary partnership in which the director or the person under (1) or (2) is a partner;
- (4) a limited partnership in which the director or the person under (1) or (2) is a partner with unlimited liability or in which one or more of such persons in a partner or are partners with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;
- (5) a limited company in which the director or the person under (1) or (2) or the partnership under (3) or (4) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's share sold; or
- (6) a limited company in which the director or the person under (1) or (2) or the partnership under (3) or (4) or the limited company under (5) holds shares, separately or in combination, in an aggregate amount exceeding thirty per cent of the total amount of such limited company's shares sold.

Section 12 ter³⁰. A commercial bank shall dispose of its immovable property acquired in accordance with Section 12 (4)(b) within five years from the date of acquisition, unless the Bank of Thailand has granted extension to such period of time or given approval to use such immovable property for premises as specified in Section 12 (4) (a).

Section 12 quarter³¹. No commercial bank shall appoint or allow any person with any of the following qualifications or attributes to be or to perform the duties of a director, manager, deputy manager, assistant manager or adviser:

- (1) being bankrupt;
- (2) having been imprisoned by a final court judgment for an offence related to property committed with dishonest intent;

³⁰ As amended by Section 11 the Commercial Banking Act (No.2), B.E. 2522

³¹ As amended by Section 11 the Commercial Banking Act (No.2), B.E. 2522

(3) having been dismissed or discharged from the government office or other government organizations or agencies on a charge of dishonest act in office;

(4) having been a director, manager, deputy manager, assistant manager of a commercial bank with its license withdrawn unless an exception has been granted by the Bank of Thailand;

(5) being removed from a position in a commercial bank on recommendation of the Minister under Section 25;

(6) being a government official in political service;

(7) being a government official with duty to control the operations of commercial banks or an official of the Bank of Thailand except in the case of a commercial bank which is a state enterprise under the law on budget procedures or in the case where an approval has been granted by the Minister for the purpose of assisting the commercial bank concerned in its operations;

(8)³² being a manager, deputy manager, assistant manager of a partnership or a limited company in which such person himself or any person as specified in Section 12 bis. is a shareholder, except that such person may be appointed or allowed to perform the duties of a director or an adviser of the commercial bank with no authority to sign, alone or together with another person, on behalf of the commercial bank.

Section 13³³. No commercial bank shall grant credits to or invest in the business of any person or undertake contingent liabilities for any person, either one or several transactions in combination, at the end of any one day, in excess of the ratio to the total capital funds or anyone or several types of capital funds under the rules, procedures and conditions as prescribed by the Bank of Thailand with the approval of the Minister unless there is the permission of the Bank of Thailand in accordance with the rules prescribed by the Minister. Such permission may be granted with conditions to be complied with.

The prescription under the first paragraph shall be published in the Government

³² As amended by Section 7 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

³³ As amended by Section 9 of the Commercial Banking Act (No.3), B.E. 2535

Gazette and if such prescription has the effect of decreasing the relevant ratio, it shall not be operative until after the lapse of fifteen days from the date of its publication.

The provisions of Section 12 bis shall apply to the transactions as specified in the first paragraph *mutatis mutandis*.

Section 13 bis³⁴. The provisions of Section 13 shall not apply in the case where a commercial bank:

(1) lends money by means of purchasing Thai Government securities or other securities as prescribed by the Bank of Thailand;

(2) lends money against Thai Government securities or other securities or other assets as prescribed by the Bank of Thailand,^{2/} but only to the extent of the amount not exceeding the guarantee value of such securities or properties as appraised by the commercial bank;

(3) grants credits as prescribed by the Bank of Thailand, or

(4) gives aval to bills, accepts bills, issues letters of credit, in which the commercial bank is under obligation to pay the sum of money, or guarantees loans, or guarantees payment in respect of selling, discounting or rediscounting of bills, as prescribed by the Bank of Thailand.^{2/}

The prescriptions under this Section shall be published in the Government Gazette.

Section 13 ter³⁵. For purposes of national development or rectification of any adverse economic conditions, the Minister shall have power, upon recommendation of the Bank of Thailand, to impose the following measures:

(1) directing commercial banks to grant credits to any type of enterprise at not less than the rate prescribed;

(2) prohibiting commercial banks to increase the amount of credits granted to any type of enterprise or to increase such amount to the level in excess of the rate prescribed.

Every determination under (1) shall have approval of the Cabinet of Ministers. The various rates prescribed under (1) for all types of enterprises shall not altogether amount to more than twenty per cent of the total deposits of a commercial bank as at the end of the preceding

³⁴ As amended by Section 13 of the Commercial Banking Act (No.2), B.E. 2522

³⁵ As amended by Section 13 of the Commercial Banking Act (No.2), B.E. 2522

year.

The prescription under (2) may be expressed as a percentage of the total outstanding amount of credits granted by a commercial bank to any type of enterprise at any one time.

The prescriptions under this Section shall be published in the Government Gazette and such prescriptions may also include rules, conditions and periods of time for compliance.

Section 13 quarter³⁶. The Bank of Thailand shall have power to publish in the Government Gazette prescribing the rules, procedures and conditions to be complied with by commercial banks in connection with accepting deposits of money, borrowing of money or buying and selling of bills of exchange or any other negotiable instrument.

The prescription under the first paragraph may be provided in accordance with categories of deposits or borrowing, categories of person, categories of documents concerning accepting deposits of money or borrowing, or categories of instruments.

Section 14³⁷. The Bank of Thailand shall have power to issue prescriptions to be complied with by commercial banks concerning the following matters:

- (1) interests payable by a commercial bank;
- (2) interests or discounts chargeable by a commercial bank,
- (3) service charges a commercial bank may demand;
- (4) earnest which a commercial bank shall demand;
- (5) securities in the form of property which a commercial bank shall demand.

Any and all the monies, properties or other things, whose value can be assessed in terms of money, which a depositor or any other person receives from a commercial bank or an officer or employee of a commercial bank by reason of his money deposits or which a commercial bank or an officer or employee of such commercial bank receives by reason of the carrying on such business of the commercial bank shall be regarded as interests, discounts or service charges under the provisions of (1), (2) or (3), as the case may be; provided that service charges in connection with the granting of credits as prescribed by the Bank of Thailand under (3)

³⁶ As amended by Section 10 of the Commercial Banking Act (No.3), B.E. 2535

³⁷ As amended by Section 14 of the Commercial Banking Act (No.2), B.E. 2522

shall not be regarded as interests or discounts chargeable by a commercial bank under (2).

The prescriptions under this Section shall have approval of the Minister and shall be published in the Government Gazette.

Section 15³⁸. A commercial bank shall record completely and correctly all liabilities and assets in the books of accounts and publish a summary statement in the form prescribed by the Bank of Thailand^{2/} showing liabilities and assets as of the last working day of every month or as of any other day as approved by the Bank of Thailand.

The published statement under the first paragraph shall be submitted to the Bank of Thailand, and shall be posted up in an open place at the commercial bank's office not later than the twenty-first day of the following month and, in addition, shall also be published in at least one daily newspaper unless otherwise prescribed by the Bank of Thailand.

Section 15 bis. A commercial bank shall close the books of accounts for each accounting period which shall be every six months of each accounting year. If a commercial bank has worthless or irrecoverable assets or doubtful assets which may be worthless or irrecoverable, as prescribed by the Bank of Thailand with the approval of the Minister, the commercial bank shall write off the worthless or irrecoverable assets from the accounts, or make reserves for the doubtful assets, at the end of the accounting period, except where a permission to act otherwise has been granted by the Bank of Thailand. Such permission may be granted with any condition.³⁹

In the case where the Bank of Thailand has granted permission under the first paragraph, if it appears that the value of the capital funds remaining after deduction of the part of worthless or irrecoverable assets which have not been written off or doubtful assets which have not made provision for as aforesaid is less than the value of the capital funds required to be maintained under Section 10, the Bank of Thailand shall have power to prescribe any measure to

³⁸ As amended by Section 14 of the Commercial Banking Act (No.2), B.E. 2522

³⁹ As amended by Section 13 of the Commercial Banking Act (No.2), B.E. 2522

be taken by the commercial bank until such commercial bank has written off the worthless or irrecoverable assets totally from its accounts or made provision for all of the doubtful assets.⁴⁰

Section 16⁴¹. Within four months from the end of the accounting year, a commercial bank under Section 5 shall publish its balance sheet and profit and loss account which have been approved by the general meeting, in the form prescribed by the Bank of Thailand. Such publications shall be posted up in an open place at the office of that commercial bank, published in at least one daily newspaper, and submitted to the Minister and the Bank of Thailand within twenty-one days from the date on which they are approved by the general meeting unless otherwise prescribed by the Bank of Thailand.

The balance sheet under the first paragraph shall be certified by an auditor approved by the Bank of Thailand in each accounting year and shall not be a director, an officer, or an employee of that commercial bank.

A commercial bank under Section 6 shall publish its balance sheet and profit and loss account of the foreign bank of which such commercial bank is a branch within four months from the end of the accounting year of that foreign bank, unless a reasonable cause of delay can be proved. Such publications shall be posted up in an open place at the office of that commercial bank.

Section 17⁴². A commercial bank shall open its office to the public for business during the working hours and close its office on the holidays as prescribed by the Bank of Thailand, unless permission has been granted by the Bank of Thailand to open or close its office at any other hours or days. Such permission may be granted with conditions to be complied with.

A notice, stating such working hours and holidays, shall be posted up by a commercial bank in an open place at its office.

⁴⁰ As amended by Section 11 of the Commercial Banking Act (No.3), B.E. 2535

⁴¹ As amended by Section 9 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁴² As amended by Section 16 of the Commercial Banking Act (No.2), B.E. 2522

Section 17 bis⁴³. For the purpose of rectifying the condition or operation of a commercial bank, or for the protection of the financial stability of financial institution system, the Minister with the recommendation of the Bank of Thailand shall have power to order such commercial bank to suspend its operation entirely or partially for a temporary period of time as prescribed and in such case the Minister may also prescribe rules, procedures and conditions.

Section 18. Any commercial bank which suspends payments shall immediately report such suspension to the Minister and shall not transact any business unless an authorization in writing is granted by the Minister. A detailed report showing the cause of the suspension of payments shall be submitted within seven days from the date of such suspension.

Section 19⁴⁴. A director or a person holding and other position in a commercial bank shall not serve as a director or a person holding any other position in another commercial bank at the same time except for the following:

(1) acting as a legal advisor or in other positions not involving operational responsibilities or advising on the operation of commercial banks;

(2) receiving relaxation from the Minister with the advice of the Bank of Thailand: such relaxation shall not exceed three years and any other condition may be prescribed therein.

Section 20. In the case where any commercial bank violates the condition specified by the Minister under Section 5, Section 6 or Section 7, the Minister is empowered to withdraw the license or to order the closure of its authorized branch, as the case may be, or to place the commercial bank under control. However, the Minister may, if he deems appropriate, order the commercial bank to take remedial actions to comply with the condition within a period of time specified by the Minister.

⁴³ As amended by Section 10 of the Emergency Decree Amending the Commercial Banking Act ,B.E. 2528

⁴⁴ As amended by Section 4 of the Emergency Decree Amending the Commercial Banking Act (No.2) ,B.E. 2540

Section 21. In the case where any commercial bank violates the provision of Section 10, the Minister is empowered to prohibit such commercial bank from distributing or disposing of the whole or any part of its profits, and to require that the whole or any part of its profit be added to the reserve or assets to be maintained under Section 6, as the case may be; and the Minister may also prohibit such commercial bank from lending money or making investments or he may allow it to do so under certain conditions until such commercial bank has complied with those provisions.

Section 22⁴⁵. Where the Bank of Thailand considers that a commercial bank:

- (1) frequently fails to maintain a cash reserve at the prescribed ratio;
- (2) frequently fails to maintain liquid assets at the prescribed ratio;
- (3) accepts deposit, borrows money, or creates contingent liability, without proper and correct recording of such item in accounts, or creates statements of credits granted which are contrary to true facts;
- (4) grants credits or invests funds in excess of the prescribed ratio, or grants credits in the manner which irrecoverableness could have been foreseen according to the rules prescribed by the Bank of Thailand;
- (5) grants credits or invests funds in an enterprise in which such commercial bank or any of its directors has certain interest, or grants credits to a shareholder of such commercial bank in an excessive amount or with unusually special conditions or provisions;
- (7) fails to write off from the account worthless or irrecoverable assets;
- (8) fails to make provision for doubtful assets;
- (9) violates or fails to comply with the prescriptions prescribed by the Bank of Thailand the purpose of protecting the public interest;

The Bank of Thailand shall have power to order such commercial bank to take or to omit actions or to rectify the acts under the first paragraph, in making such order any conditions or time limitations may be prescribed.

⁴⁵ As amended by Section 11 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

Section 23. The Minister is empowered to require a commercial bank to submit periodically or occasionally confidential statements containing the particulars specified by him, together with notes explaining or amplifying the said statements. Such confidential statements and explanatory notes shall be submitted to the Bank of Thailand.

Section 24⁴⁶. The Minister is empowered to appoint inspectors of commercial banks for the purpose of examining and reporting on the affairs and assets of commercial banks or he may delegate to the Bank of Thailand the power to appoint its officers as commercial bank inspectors. However, in any eventuality, the Minister may not appoint or delegate to the Bank of Thailand the power to appoint commercial bank inspectors for the specific purpose of examining the affairs of a private individual or of his property which may be found or held at any commercial bank except in the case under Section 35 (3).

Section 24 bis⁴⁷. The increase or reduction of capital under the second or third paragraph or the offering of shares issued to increase capital shall not be subject to Section 1117, Section 1220, Section 1222, Section 1224, Section 1225, and Section 1226 of the Civil and Commercial Code. And Section 50, Section 136 paragraph two (2), Section 137, Section 139, and Section 141 of the Public Company Limited Act B.E.2535, as the case may be.

Section 24 ter⁴⁸. Where there is evidence that the condition or operation of any commercial bank is such that damage may be caused to the public interest, or where the directors, managers or persons responsible for the operation of any commercial bank fail to comply with the order of the Bank of Thailand under Section 24 bis, the Bank of Thailand shall have power to order such commercial bank to remove the directors or persons who were responsible to the operations of the commercial bank and for having caused such damage.

⁴⁶ As amended by Section 12 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁴⁷ As amended by Section 13 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁴⁸ As amended by Section 4 of the Emergency Decree Amending the Commercial Banking Act (No.3), B.E. 2540

Where the Bank of Thailand orders the removal of any persons under the first paragraph, the commercial bank shall, with the approval of the Bank of Thailand, appoint persons to replace the persons so removed within 30 days from the removal date.

Where any commercial bank fails to remove the persons under the first paragraph or fails to appoint other persons in place of persons so removed as specified in the second paragraph, the Bank of Thailand, with the approval of the Minister, shall have the power to remove such persons or appoint one or more persons to replace the persons so removed.

Where there is an urgent need to rectify the financial condition or the operation of any commercial bank such that any delay may cause damage to the public interest, the Bank of Thailand, with the approval of the Minister, shall have the power to immediately remove directors, managers or persons responsible for the operation of the commercial bank and appoint one or more persons to replace the persons so removed as appropriate.

The person or persons appointed by the Bank of Thailand under the third or fourth paragraphs shall hold office for a period of no longer than three years. The provisions of Section 12 quarter (8) shall not be applied. The appointed persons shall be entitled to remuneration to be paid from the commercial bank as prescribed by the Minister. During the period that the appointed persons hold office, shareholders of the commercial bank shall not pass a resolution to revoke or change the order of the Bank of Thailand.

The persons removed by the order of the Bank of Thailand shall no longer be involved in, or manage, directly or indirectly, any affair of the commercial bank, and shall facilitate and provide information to the persons appointed in their places or as requested by the bank examiners.

The order of the Bank of Thailand for dismissal or appointment issued by virtue of this Section shall be deemed to be a resolution of shareholders' meeting.

Section 25⁴⁹. If, after having received an examination report from an inspector of commercial banks, the Minister is of the opinion that the condition or operation of a commercial bank is such that serious damage may be caused to the public interest, the Minister shall have

⁴⁹ As amended by Section 17 of the Commercial Banking Act (No.2), B.E. 2522

power to order such commercial bank to be placed under control or order the withdrawal of its license. However, in the case where the commercial bank has taken measures to rectify its administration, including the transfer or dismissal of its directors or officers responsible in accordance with the recommendation of the Minister within the period of time specified by the Minister, the Minister may postpone ordering control of the commercial bank or withdrawal of its license, and in such case the Minister may prescribe any condition to be complied with by the commercial bank for the purpose of rectifying the condition or operation of the commercial bank.

Section 26. In the case where a commercial bank suspends payments, the Minister shall appoint a person whom he deems suitable to be a competent officer to make an investigation thereof; and upon receipt of the investigation report therefrom, the Minister is empowered to order such commercial bank to be placed under control.

Section 27. In ordering any commercial bank to be placed under control, the Minister shall notify the commercial bank in writing. The notice of the order shall be posted up in a public place at that commercial bank and shall be published in the Government Gazette and in at least one daily newspaper.

Section 28. In taking over the control of a commercial bank, the Minister shall appoint a Control Committee, consisting of a Chairman and not less than two other Committee members. The Committee shall have the power and duty of carrying on the management of the affairs of the commercial bank in every respect and the Chairman of the Committee shall represent such commercial bank.

In the case where the Chairman is unable to perform his duty, the Minister shall appoint any Committee member to act in his place.

The Committee is empowered to appoint one or several officers to control the commercial bank and to determine the power and duty of such officers.

The appointment of such Committee and the member to act in place of the Chairman shall be published in the Government Gazette.

Section 29. When a notification of the order of control has been issued by the Minister to a commercial bank, the directors and officers of that commercial bank are prohibited from continuing to carry on its affairs unless an authorization is granted by the Control Committee.

Section 30. When a notification of the order of control has been issued by the Minister to a commercial bank, the directors, officers and employees of such commercial bank shall take appropriate actions to safeguard its property and interests, and report immediately its affairs including deliver without delay its assets together with books of accounts, documents, seals and other articles relating to its affairs and assets to the Control Committee.

Section 31. When a commercial bank has been placed under control, any person in possession of the property or documents of that commercial bank shall notify the Control Committee thereof without delay.

Section 32. If the Control Committee is of the opinion that a commercial bank under control is able to continue its business operation, the Minister shall be notified accordingly. The Minister may then, if he deems necessary, order that the commercial bank be decontrolled. Such order shall be published in the Government Gazette and in at least one daily newspaper.

Section 33. If the Control Committee is of the opinion that a commercial bank under control is unable to continue its business operation, the Minister shall be notified accordingly. The Minister may then, if he deems necessary, order that the commercial bank be decontrolled. Such order shall be published in the Government Gazette and in at least one daily newspaper.

Section 34. When the Minister has ordered the withdrawal of license or the dissolution of a commercial bank, it shall be placed in liquidation, and the Minister shall appoint a liquidator thereof.

Liquidation shall be carried out under the provisions of the Civil and Commercial Code relating to the liquidation of a limited liability company, except that the power and duty of the general meeting is specifically the power of the Minister.

Section 35⁵⁰ . For the purposes of Section 24 or Section 26 the commercial bank inspectors or competent officers, as the case may be, shall have power to;

(1) order any director, officer, employee, or auditor of a commercial bank or any person who is responsible for collecting or analyzing the data of the commercial bank either by using computers or other instruments, to testify or to deliver copies of or produce the actual books of accounts, documents or other evidence concerning the affairs, assets and liabilities of the commercial bank;

(2) enter into business premises of a commercial bank or into places which are used for collecting or analyzing the data of the commercial bank either by using computers or other instruments, in the working hours of such places in order to examine the affairs, assets and liabilities of the commercial bank, including documents, evidences, or information relating to the commercial bank;

(3) enter into business premises of the commercial bank's debtor for inspection of condition or operation, including order the debtor or any persons concerned to testify or to deliver copies of or produce the books of accounts, documents or evidences concerned where there are reasonable grounds for suspecting that the commercial bank has done the acts under Section 22 (3), (4) or (5).

For operating under (3), the commercial bank inspectors or competent officers must have prior authorization from the Governor of the Bank of Thailand or the Minister, as the case may be.

The owner or occupant of the place, or the persons concerned shall reasonably facilitate the commercial bank inspectors or competent officers in the performance of their duties under the first paragraph.

Section 35 bis⁵¹ . For the purpose of inspection, the commercial bank inspectors shall have power to enter any premises wherein an offence under Section 7 bis or Section 8 is reasonably suspected to have been committed and shall have power to seize or attach documents

⁵⁰ As amended by Section 14 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁵¹ As amended by Section 19 of the Commercial Banking Act (No.2), B.E. 2522

or things connected with the commission of such offence for inspection or prosecution purposes.

The owner or occupant of the place, or the persons concerned shall reasonably facilitate the commercial bank inspectors in the performance of their duties under the first paragraph.

Section 36. For the purpose of Section 28, the Control Committee or an authorized control officer is empowered to require any person to testify or to produce or to deliver books of accounts, documents, seals and other evidences relating to the affairs and assets of the commercial bank under control.

Section 37. Members of the Control Committee, control officers and liquidators may receive remunerations as determined by the Minister.

Section 38. The expenses and remunerations incurred in the control or liquidation of a commercial bank shall be disbursed from the assets of that commercial bank.

Section 38 bis⁵². In case commercial banks are merged with each other or merged with a financial institution, it shall not be regarded as a transfer of commercial banking license to the new commercial bank or other financial institution.

Section 38 ter⁵³. A transfer of business of a commercial bank, either wholly or significant part thereof, to other commercial bank or financial institution shall be subject to an approval of the Minister.

Upon having been granted an approval for the transfer of business from the Minister, the business may then be transferred. However, the transfer of the right of claim in this transfer of business needs not be notified to the debtors under Section 306 of the Civil and Commercial Code, but in no case shall it prejudice the right of the debtors to set up a defence against the transferee under Section 308, paragraph two, of the Civil and Commercial Code.

⁵² As amended by the Royal Proclamation Amending Commercial Banking Act (No.4) ,B.E. 2541

⁵³ As amended by the Royal Proclamation Amending Commercial Banking Act (No.4) ,B.E. 2541

Section 38 quarter⁵⁴. In case any commercial bank finds it urgent to merge its business with other commercial bank or financial institution, or transfer all of its business or some significant parts of its business to other commercial bank or financial institution to strengthen the stability of the financial institution system, the board of the directors of the said commercial bank shall prepare a project showing the details of the operations and propose to the Minister. If the Minister, with the advice of the Bank of Thailand, approves the said project, the Minister shall publish his approval in the Government Gazette. In the publication, the Minister may set the period and any conditions for the implementation of such project.

In implementing the project duly approved in the first paragraph, if the commercial bank or financial institution concerned finds it necessary to carry out the proceedings in connection with the following provisions, an exemption not to comply with these provisions shall be granted thereto, as the case may be:

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

(2) Section 50, Section 52, Section 102 incorporated with Section 33, Paragraph two, Section 137, Section 139, paragraph one, Section 140, Section 141, Section 147, and Section 148 of the Public Limited Company Act B.E.2535 (1992);

(3) Section 94 (2), Section 114, and Section 115 of the Bankruptcy Act B.E. 2483 (1940), however, specifically those relating to the transfer of property or any acts concerning the property owing to the merger or transfer of a business. In the case where there occurs damage to any person as a result of the proceedings under the second paragraph, the commercial bank and the financial institution so merged or accepted the transfer of business shall jointly be liable thereto.

Section 38 quinquies⁵⁵. When there has been published the approval of the

⁵⁴
Ibis.

⁵⁵
Ibis.

Minister under Section 38 quarter, the commercial banks and the financial institution that are to merge or transfer or accept the transfer of business shall hold a meeting of shareholders to consider the merger or transfer or acceptance of transfer of business. In this respect, the provisions of the law relating to the meeting of shareholders to Merge or transfer or accept the transfer of business of commercial bank or financial Institution shall not apply, and the said commercial banks and financial institution Shall suspend the registration of share transfer after the lapse of seven days from the Date of publication of the approval of the Minister under Section 38 quarter until the Date of meeting of shareholders, and shall call a meeting of shareholders by sending a Notice to the shareholders at least seven days but not more than fourteen days in advance. The notice calling such a meeting of shareholders shall also be advertised in the computer network and in at least one daily newspaper for a period not less than three days prior to the date of meeting. At the meeting, in case no less than three-fourths of the votes are in favour of the merger or transfer or transfer or acceptance of the business, it shall be regarded that the merger or transfer or acceptance of transfer of the business is legitimate.

In the case where the government agencies or state enterprises hold shares in any commercial bank or financial institution no less than ninety percent, when there has been published the approval of the Minister under Section 38 quarter, it shall be regarded that the approval of the Minister is a resolution of the meeting of Shareholders, and the merger or transfer or acceptance of transfer of the business is legitimate, whereby the proceedings under paragraph one needs not be carried out.

No person shall take legal action against the commercial bank and financial institution under Section 38 quarter in a bankruptcy case during the implementation of the merger or transfer upon the approval of the Minister under Section 38 quarter.

The commercial bank and financial institution under Section 38 quarter. shall be exempted from the fees and taxes and duties arisen from the merger or transfer of the business, either wholly or partly, however, as prescribed and published by the Council of Ministers in the Government Gazette, in which case it may either be a general or specific prescription.

The board of directors of the merged financial institution shall have the right to apply for registration of the merger within fourteen days from the date of publication of the approval of the Minister under Section 38 quarter.⁵⁶

Section 38 sex⁵⁷. In merging the business of commercial banks or in merging the business with financial institution or in transferring business of a commercial bank to another commercial bank or financial institution, if there is a Transfer of assets that have other securities which are not mortgaging right, pledging right, or right arisen from guaranty, such securities shall be vested to the commercial bank or financial institution so merged or accepted the transfer of the said business, as the case may be.

Section 38 septies⁵⁸. In merging business of commercial banks or in merging business with financial institution or in transferring business of a commercial bank to another commercial bank or financial institution, if there is a filing case to enforce the right to claim in the court, the commercial bank or the financial institution so merged or accepted the transfer of such business, as the case may be, shall take over as the party in the said case, and may produce new evidences to protest against the documents already submitted, cross-examine the witnesses already testified, and protest against the evidences already taken, and in case the court has passed a judgement on the enforcement of the said right of claim, such commercial bank or financial institution may take over as the creditor according to the judgement.

Section 39⁵⁹. Whoever fails to comply with the provisions of Section 7 bis, Section 9 or Section 19 shall be liable to the imprisonment for a term not exceeding one year or a fine not exceeding Baht 100,000 or both.

⁵⁶
Ibis.

⁵⁷
Ibis.

⁵⁸
Ibis.

⁵⁹
As amended by Section 20 of the Commercial Banking Act (No.2), B.E. 2522

Section 40⁶⁰ . Whoever violates the provisions of Section 8 shall be liable to the imprisonment for a term not exceeding five years or a fine not exceeding Baht 500,000 or both.

Section 41⁶¹ . Any commercial bank which fails to examine its register of shareholders or to notify its shareholders in violation of the provisions of Section 5 septem. or makes a false statement or conceals facts which must be revealed in the confidential statements or explanatory notes submitted in accordance with Section 23 shall be liable to a fine not exceeding Baht 100,000.

Section 42⁶² . Any commercial bank which violates or fails to comply with the provisions of Section 7 or Section 12 (1) or violates or fails to comply with the conditions prescribed by the Minister under the fourth paragraph of Section 5, or Section 6 shall be liable to a fine not exceeding Baht 300,000.

Section 43⁶³ . Any commercial bank which violates or fails to comply with the provisions of Section 11 sex or Section 18 shall be liable to a fine not exceeding Baht 200,000.

Section 44⁶⁴ . Any commercial bank which violates or fails to comply with the provisions of the first paragraph of Section 5 ter, Section 5 quinqué, Section 5 sexies, Section 7 bis, Section 9 bis, Section 10, Section 11, Section 11 ter, Section 12 (2) (3) (4) (5) (6) (7) (8) or (9) , Section 12 ter, Section 12 quarter, Section 13, Section 13 quarter, Section 14, the first paragraph of Section 15, Section 15 bis, Section 16, or Section 17, or violates or fails to comply with prescriptions or conditions or orders given by the Minister under Section 5 bis, Section 7, Section 12 (6), Section 13 ter, Section 17 bis, Section 21, Section 23, or Section 25, or violates or fails to comply with prescriptions or conditions or orders given by the Bank of Thailand under

⁶⁰ *Ibis.*

⁶¹ *Ibis.*

⁶² *Ibis.*

⁶³ *Ibis.*

⁶⁴ As amended by Section 12 of the Commercial Banking Act (No.3), B.E. 2535

Section 12 (4) (a) or (5), Section 13, Section 15 bis, the first paragraph of Section 17, the second paragraph of Section 22, Section 24 bis, or Section 24 ter shall be liable to a fine not exceeding Baht 300,000.

Section 45⁶⁵ . Any Commercial bank which fails to comply with the provisions of the second paragraph of Section 5 ter, Section 7 ter or the second paragraph of Section 15 or violates or fails to comply with the conditions prescribed by the Bank of Thailand under Section 7 bis or Section 7 ter shall be liable to a fine not exceeding Baht 50,000.

Section 46⁶⁶ . In the case of a continuing offence under Section 42, Section 43, Section 44 or Section 45, the offender shall be liable to a further fine of not exceeding Baht 3,000 per day for an offence under Section 42 or Section 43 or a further fine of not exceeding Baht 2,000 per day for an offence under Section 44 or Section 45, as the case may be, for every consecutive day during which such violation continues.

Section 46 bis⁶⁷ . In the case where a commercial bank commits an offence under Section 42, Section 43, Section 44 or Section 45, its directors or any persons responsible for its operation shall be liable to the imprisonment for a term not exceeding one year or a fine not exceeding Baht 300,000 or both, unless he can prove that he had no part in the commission of such offence of the commercial bank.

Section 46 ter⁶⁸ . In the case of an offence under Section 42, Section 43, Section 44, Section 45 or section 46 bis, if the offence has not been brought before the court or there is no comparison under Section 46 octo. within one year from the date of the commercial bank inspector finding out such offence or within five years from the date of its commission, such offence shall, by prescription, be no longer subject to prosecution.

⁶⁵ As amended by Section 20 of the Commercial Banking Act (No.2), B.E. 2522

⁶⁶ *Ibis.*

⁶⁷ As amended by Section 21 of the Commercial Banking Act (No.2), B.E. 2522

⁶⁸ *Ibis.*

Section 46 quarter⁶⁹. Whoever violates the provisions of the fifth paragraph of Section 24 ter, Section 29, Section 30, or Section 31 shall be liable to the imprisonment for a term not exceeding one year or a fine not exceeding Baht 100,000 or both.

Section 46 quinque⁷⁰. Whoever violates the order of the commercial bank inspector or the competent officer made under Section 35 or obstructs such commercial bank inspector or competent officer in his examination of the affairs and assets of a commercial bank or in his inspection or examination under Section 35, or makes statements or produces books of accounts, documents or other evidences relating to the affairs and assets of a commercial bank or delivers copies of such things under Section 35 any of which are false, or obstructs or fails to facilitate the commercial bank inspector in the performance of his duty under Section 35 bis. shall be liable to the imprisonment for a term not exceeding one year or a fine not exceeding Baht 100,000 or both.

Section 46 sexies⁷¹. Whoever violates the order of the Control Committee or an authorized control officer made under Section 36 shall be liable to the imprisonment for a term not exceeding six months or a fine not exceeding Baht 50,000 or both.

Section 46 septem⁷². Whoever, in the performance of his duty under the authority prescribed by this Act, having acquired knowledge of the affairs of a commercial bank, which in normal banking business is to be held in confidence, reveals such knowledge, except in the performance of his duty of for the purpose of investigation or prosecution, shall be liable to the imprisonment for a term not exceeding one year or a fine not exceeding Baht 100,000 or both.

Section 46 octo⁷³. A Committee appointed by the Minister^{2/} shall be empowered to compare any offence under Section 41, Section 42, Section 43, Section 44, Section 45, Section

⁶⁹ As amended by Section 16 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁷⁰ As amended by Section 21 of the Commercial Banking Act (No.2), B.E. 2522

⁷¹ *Ibis.*

⁷² *Ibis.*

⁷³ *Ibis.*

46, or Section 46 bis.⁷⁴

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

When a case has been compared by such Committee and the alleged offender has paid the fine as fixed within the period of time specified by the Committee, the case shall be regarded as terminated.

Section 46 novem⁷⁵. In the case where it appears that any of the following offences have been committed:

(1) in the operation of any commercial bank, its director or any person responsible for the operation of that commercial bank commits an offence concerning things under the provisions of Chapter 1, Chapter 11, Chapter IV, Chapter V or Chapter VI of Title XI of the Penal Code or Section 40, Section 41, or Section 42, of the Act on Offences concerning Registered Partnerships, Limited Partnerships, Limited Companies, Associations and Foundations B.E. 2499, or Section 243 or Section 244 of Limited Public Companies Act B.E. 2521;

(2) in the examination of a commercial bank's accounts, any auditor commits an offence under Section 269 of the Penal Code or Section 31 of the Act on Offences concerning Registered Partnerships, Limited Companies, Associations and Foundations B.E. 2499; or

(3) any person employs or supports another to commit the offence under (1) or (2), the Bank of Thailand shall be deemed to be the injured person under the Criminal Procedure Code.

For the offences in this Section, the Public Prosecutor, when instituting the criminal prosecution, shall have power to apply for the restitution of the property or the value thereof or the compensation for any damage on behalf of the person injured. In this regard, the provisions on filing of a civil case in connection with a criminal case under the Criminal Procedure Code shall apply *mutatis mutandis*.

⁷⁴ As amended by Section 17 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

⁷⁵ As amended by Section 18 of the Emergency Decree Amending the Commercial Banking Act, B.E. 2528

Section 46 decem⁷⁶. In the case where there is evidence that any person has committed an offence provided in Section 46 novem., and the Bank of Thailand considers that damage to the public interest may be caused unless an immediate action is taken, the Bank of Thailand shall have power to order the seizure or attachment of properties of that person, or properties which may legally be deemed to be properties belonging to that person. The seizure or attachment may not be longer than one hundred and eighty days unless a case has been filed in the court, in which the order of seizure or attachment shall continue to be effective until the court orders otherwise. Where circumstances render it impossible to file a case in the court within one hundred and eighty days, the court having jurisdiction may extend the period of seizure or attachment as requested by the Bank of Thailand.

The Bank of Thailand shall have power to appoint officials of the Bank of Thailand to seize or attach properties under the first paragraph.

The provision of the Revenue Code shall apply to seizure or attachment of properties under the first paragraph *mutatis mutandis*.

With respect to the first paragraph, in the case where there is reasonable ground for suspecting that such person is about to abscond from the Kingdom, the Criminal Court shall have power to restrain that person from leaving the Kingdom as requested by the Bank of Thailand. In case of emergency, when the Governor of the Bank of Thailand or a person designated by the Governor has notified the Director General of the Police Department, the Director General of the Police Department shall have power to restrain that person from leaving the Kingdom for a temporary period not more than fifteen days until the Criminal Court orders otherwise.

Whoever violates the order of the Criminal Court or the Director General of the Police Department made under the provisions of the fourth paragraph shall be liable to the imprisonment for a term not exceeding ten years and to a further fine not exceeding Baht one million.

Section 47. During a period of one year as from the date on which this Act comes into force,

(1) the provisions of the second paragraph of Section 6 shall not apply to a

⁷⁶
Ibis.

commercial bank which is a branch of a foreign bank, in which carrying on the business of commercial banking on the date of enforcement of this Act,

(2) in implementing the provisions of Section 10 and Section 13, the assets of the type prescribed by the Minister and maintained in Thailand by a commercial bank, which is a branch of a foreign bank, shall be considered as capital funds.

Section 48. During a period of three years as from the date on which this Act comes into force, the provisions of Section 19 shall not apply to a person already holding, on the date of enforcement of this Act, a position which is prohibited under the said Section.

Section 49. During the period in which notifications of the Bank of Thailand issued under Section 11 and Section 14 (1) have not yet come into force, the provisions of Section 10, Section 12 and Section 31, of the Commercial Banking Act B.E. 2488 shall apply to commercial banks.

Section 50. The Minister of Finance shall be in charge of this Act.

Countersigned by

Field Marshall S. DHANARAJATA

President of the Council of Ministers.