



Legal Alert

9 September 2022

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Update on Laws Relating to the Auto Leasing

On 15 August 2022, the Bank of Thailand (“BOT”) launched the consultation paper on the draft royal decree governing the business of hire-purchase and leasing of car and motorcycle (collectively the “Auto Leasing”) (the “Royal Decree”). The Royal Decree is enacted under Section 5 of the Financial Institution Business Act B.E. 2551 in which the BOT has the power to propose the enactment of royal decree to govern any businesses without supervisions by any regulators and having lending characteristics or financial business which affect to overall economy of Thailand.

Why Auto Leasing needed to be regulated?

The Auto Leasing business has been widely expanded in Thailand which is. around 12.3 percent of the household debt resulting from the Auto Leasing. On that note, there are no specific laws governing this industry, either in terms of interest rates or any operations. In practice, these businesses have been operating by the non-bank operators broadly in Thailand without being specifically governed despite various complaints raised by the consumers. Currently, the interest rate in this industry can be higher than typical loans which can be much more than 15% per annum.

Who will be subject to the Royal Decree?

Business operators who are juristic persons providing the Auto Leasing business as an ordinary course of business will be subject to the said law. However, the new law will not govern business operators who are already regulated by government agencies, such as commercial banks and special purpose financial institutions to avoid duplication of supervision.

What is the main focus of the Royal Decree?

The Royal Decree will be mainly focusing on supervision of hire purchase and leasing of cars and motorcycles as normal trades which are not yet under any specific laws and regulators for consumer protection and financial stability.

Among other supervision measures, the BOT will also require business operators to provide disclosures to consumers, such as interest rates, service fees, and various penalties

As for interest rates, the draft Royal Decree has not been set yet. However, Section 11 of the Royal Decree empowers the BOT to prescribe the interest.

Will the existing and new business operators be required to obtain a license before operating such businesses?

Neither existing nor new business operators are required to apply for a license from BOT to conduct the businesses. However, BOT requires business operators to “self-declaration” and comply with the BOT’s requirements, i.e., after the Royal Decree comes into effect, business operators are required to report information about their business operations and implementation to the BOT in accordance with the rules to be issued by the BOT, e.g., informing of product information, disclosure of interest rates, discount rates, and service fees, entering into a contract with the consumers etc.

Are there requirements on minimum capital, numbers or nationalities of shareholders and directors of the business operators imposed by the BOT?

There are no requirements for minimum capital, and nationalities of shareholders and directors of the business operators. However, Auto Leasing is subject to the Annex 3(21) of the Foreign Business Act B.E. 2542, where the foreign operator will be required to obtain the Foreign Business License prior to operating such business, unless they are financial institutions which are not under the restrictions of the Foreign Business Act.

Are there any penalties or regulatory sanction resulting from violation or non-compliance with the Royal Decree?

There will be both criminal liabilities and administrative powers for non-compliance. For criminal liabilities, the sanctions of the draft will be an imprisonment, fine, or both and will also capture directors, managers, managing partners who have management power or any person responsible for the operation of the business. As for administrative power, the BOT can temporarily suspend all or part of the operation within the specified time if the violation may cause harm to the public.

When will the Royal Decree become effective?

Currently, they are only in the hearing stage. The draft is for the Royal Decree to come into effect after 180 days from the date published in the Government Gazette. During this 180-day grace period, the BOT will prepare the BOT’s Notification prescribing details and guidelines on regulating the Auto Leasing business, and to allow the business operators to adapt and understand the said law.

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