

**BANKING AND FINANCE  
PRACTICE GROUP**

## Caveat: Fundraising Marketing

If you are watching television or reading newspapers these days, you may notice that financial institutions, especially commercial banks, are actively launching various incentives involving different kinds of fundraising campaigns and other promotions in order to attract their customers' attention by providing various kinds of rewards and payoffs such as lucky draws. The legality of these practices is highly questionable in respect of Thai laws and regulations. The Bank of Thailand (the "**BOT**"), the regulatory authority supervising most private financial institutions in Thailand, regulates these activities pursuant to:

- (a) the regulation Re: Principles of Practices on Interest, Discount, Fee and Penalty for the Commercial Bank (BOT's notification no. SorNorSor. 80/2551, dated 3 August 2008) and
- (b) the circulation letter Re: Practices on the Deposit Interest (BOT's circulation letter no. TorPhorTor. ForNorSor. (23) Wor. 1335/2553, dated 7 September 2010).

Nevertheless, numbers of inquiries concerning such practices are continuously addressed to the BOT for clarifications and guidances.

### *The Purpose of BOT's Circulation Letter*



Most recently, the BOT has published and circulated to all financial institutions under its supervision a new circulation letter dated 17 March 2011 Re: Marketing Campaign on Fundraising (BOT's circulation letter no. TorPhorTor. ForNorSor. (23) Wor. 436/2554, dated 17 March 2011) (the "**BOT's Circulation Letter**"). The purpose of this BOT's Circulation Letter is to clearly clarify the issues concerning campaigns and promotions relating to the fundraising practices of financial institutions together with other related issues.

To give a brief outline of the BOT's position on these issues, we can say that it is quite clear that the BOT does not support financial institutions in using or implementing a marketing campaign which will be focused on fundraising by offering money and other kinds of assets to depositors unless it is provided in a form of attractive interest rates which is offered to all customers on an equal basis. However, the BOT does not condemn the current acknowledged practice of the customary gift offered to a depositor, provided that such gift is distributed to every depositor under the same terms and

*The key principles of BOT's  
Circulation Letter*



conditions. In any case, the BOT does not support financial institutions' marketing campaigns based on lucky draws.

This BOT's Circulation Letter sets out key principles applicable to marketing campaigns and promotions involving the fundraising practices of financial institutions and other related issues and can be summarized as follows:

**1. *Information Disclosure and Consumer Protection***

Every marketing campaign and promotion has to include an annual percentage interest rate which will allow a depositor to make a comparison with any equivalent offer that might be provided by other financial institutions. It is also stressed that the information provided should be clear and unequivocal. In addition, the offered benefits must be provided to every depositor on an equal basis.

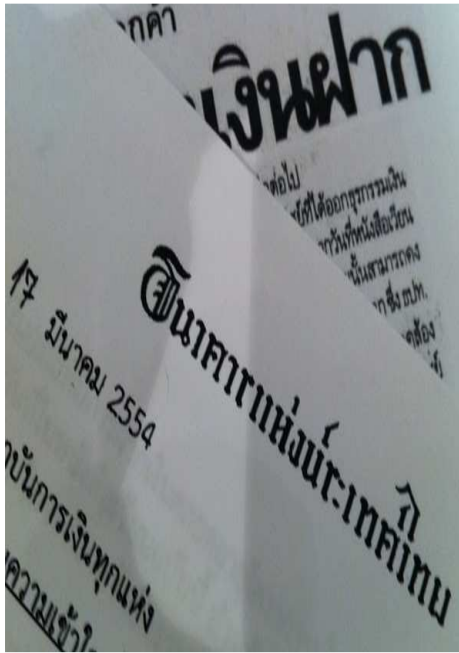
**2. *Growing (Progressive) Interest Rate***

When a financial institution provides a depositor with a growing (progressive) interest rates on its deposit, the effective or overall interest rate or the total rate of return must be made available and notified to that depositor. For clarification, the growing (progressive) interest rates are the interest rates which gradually increase over time.

**3. *Category of Deposit which is not protected by the Deposit Protection Agency ("DPA")***

Pursuant to the Deposit Protection Agency Act B.E. 2551 (2008), certain deposit amounts are guaranteed by the DPA.

It is interesting and worth mentioning that some types of deposit or "deemed" deposits are not protected by the DPA. The type of those "deemed" deposits can be illustrated in the following two categories:



- **Bill of Exchange issued against any deposit to a financial institution**

The bill of exchange provided in exchange of any amount of money deposited to a financial institution is not covered and guaranteed by the DPA and will not be qualified as a “deposit”. As a consequence, this kind of product, even though equivalent to depositing money with such financial institution, is not protected and guaranteed by the DPA.

- **Financial Derivative attached to a deposit**

Since the publication of this BOT’s Circulation Letter, commercial banks are not allowed to issue derivatives based on the deposit transaction (BOT’s notification no. SorNorSor. 13/2551, dated 3 August 2008 Re: Permission for the Commercial Bank to have the financial derivative attached to the deposit or loan transaction). Even though this type of product is available in the market since the last financial crisis more than a decade ago, it is no longer supported by the BOT and the BOT is in the process of issuing a regulation relating to this issue.

It is noteworthy and clear from this new BOT’s Circulation Letter that the BOT is now providing more and more consumer protection regulations against financial institutions under its supervision. You may notice from the recent banking and financing news that the BOT (under a full support from the Minister of Finance) has been actively undertaking a campaign to ask (and to some extent force) commercial banks to reduce their fees and non-interest revenues, e.g. ATM fees, transfer fees through ATM machines and other non-interest or service type revenues of the commercial banks. This trend seems to be the mission that the BOT is focusing on at the moment and will be here to stay at least for a while until the BOT can rest assure that the financial institutions are not, in the BOT’s view, taking unfair advantages over their customers.

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- Projects,
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- Corporate Real Estate,
- Banking and Finance,
- Private Equity & Foreign Direct Investment,
- Administrative Constitutional Law,
- Dispute Resolution and Employment & Labor.



**THERE IS ALWAYS A SOLUTION.**

#### **Important Note and Disclaimer**

The content of this Newsletter is prepared as of 28 March 2011.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.