

THE BOT'S NOTIFICATION ON THE RULES AND PROCEDURE FOR SEIZURE

For criminal law terminology, a “fine” is one of the legal punishments imposed on persons committing any legal offence for which a fine is imposed as one of the punishments. In cases where the amount of fine is very high, enforcement on the assets of the offender is the preferred method of enforcement and the procedure for seizure or attach the properties will apply.

This newsletter is intended to focus on the following persons who commit wrongful acts under Sections 140 - 146 and Section 148 of the Financial Institution Act B.E. 2551 (the “**Offences**”):

- (1) Director
 - (2) Manager
 - (3) Person with authority to manage a financial institution
 - (4) Auditor
 - (5) The person who causes another person to commit any offence
 - (6) The person who assists or facilitates the commission of an offence of (1) - (4)
- (Collectively referred as to the “**Offender**”)

In the past as there is no clear procedure for asset seizure, on 1 March 2011, the Bank of Thailand (“**BOT**”) issued the Notification No. ForKorDor. 1/2554 re: rules and procedure for seizing or attaching assets and amounts of money necessary for living and support of the family of the person whose asset is seized or attached (the “**Notification**”) which was issued by virtue of Section 152 of the Financial Institution Act B.E. 2551 in order to prevent the Offender(s) to move or transfer the assets or any rights on the assets of movable properties or immovable properties (the “**Assets**”) to others to avoid legal enforcement over such Assets.

The following note has been prepared to indicate the main contents of the Notification:

The procedure to attach the Assets



BOT will submit the notice specifying the prohibition to sell, assign, transfer, or otherwise dispose of any Assets to the related departments to proceed with the attachments of the Assets. If the Assets includes land, the Land Department must report the results of the enforcement to BOT within 15 days from the date stated on such notice in order for the BOT to pass the information to the Offender whose Assets are attached.

The procedure to seize the Assets



The process to seize the Assets depends on the type of Assets involved. In order to seize immovable Assets, such as land, after the BOT sends the notice to the Land Department, the officer at the Land Department will record such seizure in the register. After that the seizure of the Assets will be proclaimed at the location of the Assets. Moreover, if a building belonging to another person or its co-owner is attached to the Assets, evidence of their rights over the attached building will also be required.

In order to maintain the Assets, after the procedure of seizing or attaching is completed, the BOT may use its own discretion to determine the means to maintain such Assets. Subject to the nature of each Asset, the BOT also has the power to sell the Assets, either by auction or in any other suitable manner as is applicable.

The details of the amount of money necessary for living and support of family of the person whose asset is seized or attached which was executed

The Notification also indicates Assets which shall not be seized or attached so that the Offender may utilize such Assets to earn a living. The Assets in this category include but is not limited to the property which, by law, is not transferable or not liable to execution, salaries, remuneration, pensions, recompense, supportable money or other income of similar nature, whereby the amount must not exceed the amount specified in the Notification. The BOT is empowered to determine the amount of money on a case by case basis, depending on the status of the family.

In conclusion, this Notification makes the procedure for seizing Assets clearer to the public. However, the period of time involved in dealing with the procedures and the reporting of the results of the enforcement of the procedures may cause a delay in the seizure and attachment of the Assets and may lead to the Offenders transferring the Assets prior to enforcement over the Assets being carried out. It is interesting to see whether this new Notification will make the procedure for assets seizures more efficient and can lessen or eliminate the practice of the Offenders transferring the Assets prior to such seizure.

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**Important Note and
Disclaimer**

The content of this Newsletter is prepared as of 3 June 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.