

We discussed in our previous episode benefits offered under the Escrow Act B.E. 2551 (2008) (“**Escrow Act**”). In this episode, we will elaborate how commercial banks and relating parties should adapt themselves to attain optimum benefits from the Escrow Act.

Who can become an escrow agent?



With abounding benefits offered under the Escrow Act, only qualified entities can apply as a licensed escrow agent. According to the Escrow Act, only financial institutions and other specific juristic persons (“**Qualified Entities**”) can obtain license to operate as an escrow agent under the Escrow Act from the Fiscal Policy Office, Ministry of Finance. At the time of issuing this newsletter, no ensuing ministerial regulations exists which describes identity of those other juristic persons. It is noted that parties might opt to apply the escrow transaction beyond the ambit of the Escrow Act, but no benefit under the Escrow Act will be available to those transactions.

Major Criteria

When applying for the license, the Qualified Entities need to demonstrate to the Ministry of Finance that they uphold satisfactory level of good corporate governance and are ready to operate the escrow business. These requirements are represented in the Ministerial Regulations re: request for obtaining the license to operate an escrow business for financial institutions B.E. 2551. One of the interesting criteria is the maintenance of reserve required under the laws regulating the applicant who is a financial institution. Qualified Entities in this category need to verify its own reserve requirements whether or not it is in place before applying for the licenses under the Escrow Act.

“Conflict of Interests”



One of the significant restrictions for operating as an escrow agent is that the escrow agent who has a conflict of interests with the contractual parties, whether directly or indirectly, must not act as the escrow agent for that particular transaction. The Escrow Business Operation Supervision Committee (the “**Committee**”) issued a Notice of Escrow Business Operation Supervision Committee re: Bases on Vested Interest of Escrow Agent with Contractual Parties dated 1 Oct 2008 (the “**Notice**”). In this Notice, the following cases are the situations where the escrow agent has conflict of interests and accordingly is prohibited from acting as the escrow agent for such particular transactions;

- The escrow agent has relationship with either one or both contractual parties in a description of a mother company, a subsidiary company, or a joint company.
- A director, the manager, or the person with management powers of the escrow agent is a contractual party or has a family relation with either contractual party.
- The escrow agent grants loan to the contractual party who has duty to transfer or to deliver property or documents which are evidences of debts.

The Escrow Act specifically provides the level of professionalism required of an escrow agent. It is not so simple that once the Qualified Entities get the required license, it can undertake all escrow transactions without any restriction. With at least the conflict of interests restriction currently applicable, the licensed escrow agent needs to be aware of and refrain from violating this restriction when operating the licensed activities.

No Commingling of Portfolio

As the escrow business conducted under the Escrow Act would in many instances deal with a large amount of funds and assets, the Escrow Act requires that the escrow agent segregate the escrowed portfolio from those of the escrow agent itself. This requirement is to eliminate the risk of commingling of assets of the escrow agent and its customer. The foregoing restriction would yield more transparency to the escrow transactions operated under the Escrow Act.

This is our last episode on Escrow Act. We hope that this series under the new escrow act offer you enticement of benefits available under the Escrow Act, and thus are useful to your business.

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

Important Note and Disclaimer

The content of this Newsletter is prepared as of 3 August 2009.

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.