

## THE BOT'S NOTIFICATION ON PERSONAL OR CORPORATE GUARANTEE FOR THE FINANCIAL INSTITUTION

We refer to the Notification of the Bank of Thailand (“BOT”) No. SorNorSor. 78/2551 re: personal or corporate guarantee for the financial institution issued by virtue of the Financial Institution Business Act, B.E. 2551(2008)(“FIBA”) which was executed on August 3<sup>rd</sup>, 2008 (the “Notification No. SorNorSor. 78/2551”). This Newsletter contains a summary of such Notification that should be of interest to all financial institutions as well as debtors and guarantors of the financial institutions.

### Personal or corporate guarantee for the financial institution covering unlimited future debt is now prohibited

In the past, many financial institutions provided in the personal or corporate guarantee that the guarantor shall be liable not only for the current debt, but also the future debt of the debtor which is unlimited. This provision is, in BOT's point of view, unfair to a guarantor and limit a guarantor's right to manage its own risk. Therefore, the BOT issued the Notification No. SorNorSor. 78/2551 to set out terms and conditions of a personal or corporate guarantee. In other words, a personal or corporate guarantee executed from August 3<sup>rd</sup>, 2008 onward shall clearly specify the principal amount of debt or there shall be no provision which state that a guarantor shall be liable for an unlimited future debt in a personal or corporate guarantee.

### Financial institution to send written notice to a guarantor

In addition, in the case that the underlying debt of a personal or corporate guarantee sets a definite time of payment and a financial institution agrees to extend the time for the principal debtor to settle its debt but they cannot have an agreement within 6 months from the date that the debtor is in default, such financial institution shall give written notice in details to the guarantor. Therefore, from August 3<sup>rd</sup>, 2008 onward, if there is an extension of time for the principal debtor to settle its debt which is more than 6 months, the financial institution shall inform the guarantor of such debt even though such personal or corporate guarantee was executed before August 3<sup>rd</sup>, 2008.

However, it is important to note that a rationale and spirit behind the FIBA is to protect and make it fairer for a guarantor. Therefore, if there is any change to a loan agreement that affect the liability of the guarantor, even though such loan agreement and a personal or corporate guarantee was executed before August 3<sup>rd</sup>, 2008, it is likely that a financial institution may not force the guarantor to be liable for any future debt that incur after August 3<sup>rd</sup>, 2008. As a result, a following approach should be taken.

- (i) Arrange for the guarantor to enter into a new personal or corporate guarantee agreement which clearly specifies the amount of debt that it is liable for in accordance with a previous loan agreement and its amendment. In this case, the previous personal or corporate guarantee agreement shall be substituted by the new personal or corporate guarantee agreement.
- (ii) Arrange for the guarantor to enter into an amendment to a personal or corporate guarantee agreement which specifies a principal amount that a guarantor is liable in accordance with a previous loan agreement and its amendment.
- (iii) Arrange for the guarantor to enter into a new personal or corporate guarantee agreement which guarantees only the amount of debt incurred according to an amendment of the loan agreement. This new personal or corporate guarantee agreement should clearly specify that it shall be in addition to, independent of, without prejudice to, and shall not be in substitution of the previous personal or corporate guarantee agreement.

Nevertheless, please note that if the change made in a loan agreement is not significant and does not affect the liability of a guarantor, then a personal or corporate guarantee agreement made as a security for such loan agreement prior to August 3<sup>rd</sup>, 2008 is still enforceable even though it does not specify the principal amount of debt that the guarantor is liable for or has a provision which state that a guarantor shall be liable for an unlimited future debt.

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**Important Note and Disclaimer**

The content of this Newsletter is prepared as of 13 October 2008.

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.