

Client Alert

June 2016

e-Payment Law Update (Episode 2/2016):

Additional Requirements for e-Payment Service Providers, and Regulating e-Payment by Special Financial Institutions

There have recently been a lot of developments regarding the e-Payment laws and regulations. These are the featured updates:

- e-Payment service providers (types C3 and C5) and e-Money service providers (types A, B4 and C6) must ensure that their financial status and liquidity are sufficient for the continuance of services.
- e-Money service providers (type C6) that are not financial institutions must maintain net shareholder equity at not less than 8 percent of outstanding funds received in advance (i.e. the float amount).
- e-Payment service providers of all types that are not financial institutions must comply with the new criteria for appointing agents while those that are financial institutions must comply with the BOT regulations on appointment of Banking Agents.
- Special financial institutions must notify, register, or obtain a license for their e-Payment service businesses, otherwise they can continue the businesses only until 24 November 2016.

1. Additional Requirements for e-Payment Service Providers

1.1 Financial Status and Net Shareholder Equity to Float Amount Ratio¹

1.1.1 Joining with e-Money service providers (types A, B4 and C6), now providers of an e-Payment service via any equipment or network (type C3) and substitute payment service (type C5) are required to ensure that their **financial status and liquidity are sufficient** for the continuance of services and prevent any damage to customers. This requirement came into force on 29 April 2016. Unlike requirement on equity to float ratio below, there are no concrete criteria as to what will be considered sufficient. Business operators should keep this requirement in mind and periodically review their financial status and liquidity.

1.1.2 e-Money service providers (type C6) who are not financial institutions must maintain net shareholder equity at not less than **8 percent** of outstanding funds received in advance (i.e. the float amount) as calculated at the end of each quarter and must submit the report to the BOT within 30 days from the end of each quarter. If this requirement is breached, the Electronic Transactions Commission ("**ETC**") may take certain actions such as imposing

www.bakermckenzie.com

Bangkok

5th Floor and 21st-25th Floors
990 Abdulrahim Place
Rama IV Road, Silom, Bangrak
Bangkok 10500
Thailand

¹ Notification No. SorNorSor 3/2559 Re: Criteria, Procedures, and Conditions for Regulating Electronic Payment Service Business

fine penalty, suspending or even revoking the license. The calculation method is as set out in detail in the notification.

As Prompt Preventive Action, if the ratio is lower than the specified threshold amounts (**12 and 10 percent**), e-Money service providers are required to perform certain actions such as informing the BOT and providing a plan to fix it. However, there are certain exceptions in which the e-Money service provider can apply for a waiver from the BOT.

This requirement will come into force 180 days after 29 April 2016.

1.2 Appointment of Agents²

If an e-Payment service provider appoints agents as additional channels for communication and service provision, the e-Payment service provider must comply with several requirements, for example:

- **Be liable** to the service users for the operation by the agents and subcontractors of the agents.
- Monitor the operation of the agents and subcontractors of the agents to ensure **compliance with laws and regulations**.
- Ensure that the agents have the prescribed **qualifications**.
- Maintain **risk management guidelines**, e.g. a maximum fund transfer amount that agents can handle, requirements for bank guarantees or cash collateral from the agents.
- Ensure that the appointment of agents is **not, in effect, a circumvention** by the agents to operate an e-Payment business without appropriate licenses.
- Require the agents to keep **personal data** of service users confidential and secure.
- Provide an **updated list** of agents to the BOT biannually.

This requirement will come into force 90 days after 28 April 2016.

2. Royal Decree Regarding Supervision of e-Payment Service Businesses of Specialized Financial Institutions

The Royal Decree Regarding Supervision of e-Payment Service Businesses of Specialized Financial Institutions will become effective on **28 July 2016**. The Royal Decree is intended to supervise and bring the e-Payment service businesses of specialized financial institutions ("**SFIs**") to be under regulation with similar standards to those applicable to players in the private sector. Currently SFIs include Government Savings Bank ("**GSB**"), Bank for Agriculture and Agricultural Co-operatives ("**BAAC**"), Government Housing Bank ("**GHB**"), Islamic Bank of Thailand ("**IBank**"), Export-Import Bank of Thailand ("**EXIM Bank**"), Small and Medium Enterprise Development Bank of Thailand ("**SME Bank**"), Thai Credit Guarantee Corporation ("**TCG**"), and Secondary Mortgage Corporation ("**SMC**").

SFIs must notify, register, or obtain a license, depending on the type of e-Payment service businesses, **during the period from 26 August to 25 September 2016**. If SFIs have not done so within the prescribed period, SFIs can continue the e-Payment service businesses **only until 24 November 2016**.

² Notification No. SorNorSor 4/2559 Re: Requirements regarding Agents of e-Payment Service Providers

For further information,
please contact:

Komkrit Kietduriyakul
Partners
+66 2636 2000 ext. 3024
komkrit.kietduriyakul@bakermckenzie.com

Kullarat Phongsathaporn
Lawyer
+66 2636 2000 ext.3105
kullarat.phongsathaporn@bakermckenzie.com

Pattarapon Lerdpipat
Lawyer
+66 2636 2000 ext.3166
pattarapon.lerdpipat@bakermckenzie.com

Key concepts of the draft notifications of the Electronic Transactions Commission ("**ETC**") and the BOT are as summarized below.

- In order to achieve a "level playing field", most of the key requirements in the draft notifications are similar to those for commercial banks and non-banks, such as the type and scope of businesses³, risk management, IT security guidelines, consumer protection, and dispute handling.
- However, some criteria concerning financial status is not imposed on SFIs because SFIs are already regulated under specific laws, e.g. no requirement for float money or equity to float ratio.
- For other aspects that are already regulated by specific laws, there will be no further requirements under this Royal Decree and notifications e.g. financial stability, registered capital, qualifications of directors and management, etc.

We expect to see further developments affecting e-Payment laws in the near future. We will continue to monitor and inform you of these developments.

³ **Schedule A.** Service businesses require **notification** before providing the services:

Providing of electronic money service for purchasing specific goods or services according to the description specified in advance from only one service provider, however, except the providing of electronic money service used limitedly to afford convenience to the consumers without seeking profits from issuance as prescribed by the BOT and approved by the ETC.

Schedule B. Service businesses require **registration** before providing the services:

- (1) Providing of credit card network service.
- (2) Providing of EDC network service.
- (3) Providing of transaction switching service for one payment system.
- (4) Providing of electronic money service used for purchasing specific goods or services according to the description specified in advance from several service providers at the place under the same distribution and servicing system.

Schedule C. Service businesses require **license** before providing the services:

- (1) Providing of clearing service.
- (2) Providing of balance settlement service.
- (3) Providing of electronics payment service via any equipment or via network.
- (4) Providing of transaction switching service for payment of several systems.
- (5) Providing of substitute payment service.
- (6) Providing of electronic money service used for purchasing specific goods or services according to the descriptions specified in advance from several service providers without limited sites and not under a common distribution or servicing system.