

Payment System Act

The Payment System Act B.E. 2560 (“**PSA**”) was published in the Government Gazette on 16th October 2017. It will become effective on 14th April 2018.

The PSA empowers the Ministry of Finance (“**MOF**”) and the Bank of Thailand (“**BOT**”) to license, regulate and supervise payment systems and payment services in order to manage risk, security, stability, good governance of the financial system and to enhance customer protection and efficiency and competitiveness of Thailand.

1. Definitions

Section 3 of the PSA defines the following terms:

“**Payment System**” means the system or other processes for transfers, clearings or settlements of funds.

“**Important Payment System**” means a payment system which is important to the financial stability of the payment system, the financial institution, or the financial system of Thailand.

“**Regulated Payment System**” means a payment system which must be granted a license from the Minister of Finance or registered with the BOT.

“**Regulated Payment Service**” means a payment service which must be granted a license by the Minister of Finance or registered with the BOT.

“**Advance Payment**” means an advance payment received by a regulated service provider from a customer as a received advance payment or as a transferred advance payment.

2. Important Payment System (“**IP System**”)

An IP System operates as a foundation of the national economy and supports high value fund transfers, clearings, settlements between members of the system (Section 5).

The BOT regulates and supervises IP Systems to ensure that they function as security and efficiency systems (Section 7).

3. Regulated Payment System (“**RP System**”)

An RP System operates as a center or network between users of the system to support fund transfers, clearings, or settlements and operates the payment that may affect the interest and confidence of the public or the stability and security of the payment system (Section 12). The

operator of each RP System must hold a license granted by the MOF.

The applicant for a license to operate the RP System must be a private limited company, a public limited company or other legal entities to be determined by the BOT (Section 13).

An operator of the RP System who wants to cease the business must notify the BOT according to the BOT regulations (Section 15).

4. Regulated Payment Services (“RP Services”)

The RP Services consist of (1) the service of credit card, debit card or ATM card, (2) the e-money service, (3) the e-payment service through electronic means for sellers, service providers or creditors, (4) the fund transfer service through electronic means, (5) other payment services that may affect financial system or the public interest (Section 16). Each of operators of the RP Services must be a private limited company, a public limited company or other legal entities to be determined by the BOT (Section 17) holding a license granted by the MOF (Section 7).

An operator of the RP System who wants to cease the business must notify the BOT according to the BOT regulations (Section 23).

5. Advance Payment

A service provider who receives an advance payment from a customer must prepare and keep a separate advance payment account of each customer. The advance payment funds must be kept separately from the service provider’s assets and cannot be used for any other purposes. The advance payment is the customer’s asset. However, if the advance payment generates any benefit. Such benefit is asset of the service provider (Section 19).

The advance payment is not subject to seizure in a civil case or distribution to creditors in a bankruptcy case against the service provider. The BOT and the Official Receiver are authorized to manage the advance payment according to the BOT regulations (Section 21).

6. License

The operators of the RP Systems and the RP Services must hold a license granted by the MOF. However, in case of the systems or services are of a new innovation or new technology and are in a trial period or are provided to a limited number of customers without impact to the financial system or the public, the operator is only required to register itself with the MOF (Sections 12 and 16).

7. Supervision

The BOT is empowered to revoke a license if the operator ceases operating the permitted business or does not comply with the BOT regulations (Section 31).

The BOT is empowered to prohibit any transactions relating to the payment systems and the payment services which are carried out without a license or registration under the PSA (Section 34).

If any operator disagrees with the order of the BOT, the operator can appeal to the Minister of Finance. If the order is made by the Minister, the operator can file an appeal under the Administrative Procedure Act (Section 36).

The existing operators of the RP Systems and the RP Services must obtain a license or register themselves with the MOF within 120 days from the effective date of the PSA (Section 57).

8. Penalties

An operator who fails to comply with the regulations issued by the BOT will be subject to an administrative fine up to THB3 million (Section 40).

A holder of an RP System license or an RP Service license who fails to comply with the PSA will be subject to an administrative fine up to THB2 million (Section 41).

An operator of the RP System or the RP Service who fails to comply with the PSA will be subject to an administrative fine up to THB1 million (Section 42).

If the offender is a legal entity, its directors, managers or persons in charge of its operation will also be liable for the administrative fine jointly with it (Section 43).

An operator who fails to register itself for operation of the RP System or the RP Service under the PSA will be subject to imprisonment up to 5 years or a fine up to THB500,000 or both the imprisonment and the fine.

An operator who fails to obtain a license from the MOF as required under the PSA will be subject to imprisonment from 2 to 10 years or a fine from THB200,000 to THB1 million or both the imprisonment and the fine (Sections 44 and 45).

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