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This issue covers the following topics:

Indonesia

ENFORCEMENT OF CORPORATE CRIMINAL LIABILITY FOR CORRUPTION

インドネシアの実務上、贈収賄規制に違反した場合の罰則はこれまで個人に対してのみ科されていたが、2016 年に最高裁判所規則として法人処罰に関する規則が制定され、いわゆる両罰規定が導入され、法人に刑事罰を科すための手続規定が整備された。そして今般インドネシアの裁判所では初となる贈収賄規制違反に基づき法人への刑事罰を科す旨の判決が出された。これまでの実務を大きく変更する重要な判決であることから本稿で紹介する。

As a follow through to the enactment of Supreme Court Regulation No. 13 of 2016 on the Procedures for the Handling of Crimes Committed by a Corporation ("**Supreme Court Regulation 13/2016**"), the Indonesian court for the first time imposed criminal sanctions on a corporation for corruption in January 2019. Prior to the enactment of Supreme Court Regulation 13/2016, Indonesia did not have implementing regulations which set out the procedure for imposing criminal sanctions on a corporation. As such, in the past, no corporations were imposed with criminal sanctions due to corruption in Indonesia.

The Supreme Court Regulation 13/2016 sets out, among others, (i) the conditions under which a corporation may be imposed with criminal sanctions, (ii) the person who is entitled to represent a corporation, and (iii) the form of sanctions that can be imposed on a corporation.

According to the Supreme Court Regulation 13/2016, in determining criminal sanctions to be imposed on a corporation, the Judges shall consider the following:

1. Whether the corporation receives proceeds from the criminal action;
2. Whether the corporation is negligent during the commission of the criminal action; or
3. Whether the corporation has performed precautionary measures to prevent the criminal action.

Furthermore, the Supreme Court Regulation 13/2016 stipulates that the principal criminal sanction that can be imposed on a corporation is in the form of monetary penalty. Thus, a corporation cannot be sanctioned by imprisonment for any criminal act it has committed.

In its first corporate corruption case, an investigation by the Indonesian Corruption Eradication Commission/*Komisi Pemberantasan Korupsi* ("**KPK**") was initiated sometime July 2017, whereby it announced the alleged involvement of PT Nusa Konstruksi Enjiniring (formerly known as PT Duta Graha Indah, "**NKE**") in corruption to secure the construction project of a government hospital in Bali.

The determination of NKE as a suspect in the corruption investigation progressed from the results of KPK's investigation into NKE's Director, Mr. Dudung Purwadi ("**Mr. Purwadi**"). Mr. Purwadi was proven guilty of bribing a public officer to win the tender process of a government project. The court sentenced Mr. Purwadi to 4 years and 8 months of imprisonment and to pay a monetary penalty in the amount of IDR 250 million, while the public officer who received the bribe was sentenced with 3 years of imprisonment and monetary penalty in the amount of IDR 50 million. Based on these court decisions, the KPK expanded its investigation to the criminal liability of NKE as a corporation.

The Indonesian Law No. 31 of 1999 as amended by No. 20 of 2001 on Corruption Eradication ("**Anti-Corruption Law**") has set out, among others, several relevant provisions in relation to corporate criminal liability, *viz:*

> Article 2 Paragraph (1)
> "*Anyone unlawfully enriching himself and/or other persons or a corporation in such a way to be detrimental to the financial of the state or the economy of the state shall be liable to life in prison, or a prison term of not less than 4 (four) years and not exceeding 20 (twenty) years, and a monetary penalty of not less than IDR 200,000,000 and not exceeding IDR 1,000,000.*"
>
> Article 3 Paragraph (1)
> "*Anyone with the intention of enriching himself or other persons or a corporation, abusing the authority, the facilities or other means at their disposal due to rank or position in such a way that is detrimental to the financial of the state or the economy of the state shall be liable to life imprisonment or a prison term of not less than 1 (one) year and not exceeding 20 (twenty) years and/or monetary penalty of not less than IDR 50,000,000 and not exceeding IDR 1,000,000,000*"
>
> Article 17
> "*In addition to being liable to the punishment referred to in Article 2, Article 3, Article 5 up to and including Article 14, a defendant may be liable to supplementary penalties as stipulated in Article 18*"
>
> Article 18 Paragraph (1)
> "*…, further supplementary penalties shall be as follows:*
> *(a). the confiscation of tangible or intangible movable assets or fixed assets used to commit or being the proceeds or criminal acts of corruption, including the guilty party's corporation where the criminal acts were perpetrated, and the same shall apply to the price of the assets used to replace the aforementioned assets;*
> *(b). the payment of compensation, the amount of which shall not exceed the amount of assets obtained through such criminal acts of corruption;*
> *(c). the closure of the entire company or parts thereof for maximum period of 1 year; and*
> *(d). the revocation of all or a part of certain rights, or the abolishment of all or part of certain benefits obtained or to be granted by the government to such party*"
>
> Article 20 Paragraph (7)
> "The principle penalties that may be brought against a corporation shall only be in the form of monetary penalty, provided that the maximum sanction is increased by 1/3 (one-third)"

In NKE's case, the public prosecutors indicted NKE for enriching itself through the unlawful tender process. The public prosecutors argued that had the tender process been carried out in accordance with the prevailing regulations and the outcome not engineered through corruption by the Director of NKE, the contract price for the project should have been lower. Thus, NKE was considered to have caused financial losses to the state.

During the trial, NKE acknowledged the violation and did not submit material objections against the

indictment. NKE only requested the Judges to consider imposing penalties lower than the amounts requested by the public prosecutor, i.e. principal penalty in the amount of IDR 1 billion and compensation payment in the amount of IDR 188 billion. According to some articles we have reviewed, NKE's acceptance of the indictment was because its Director was already proven guilty before the courts, and therefore, NKE as a corporation was not in a position to raise strong arguments to object the indictment.

Considering that the Supreme Court Regulation 13/2016 and Anti-Corruption Law does not allow the imposition of imprisonment as a principal penalty to a corporation for acts of corruption, the Indonesian court handed down the following verdict regarding NKE:

1. Principal penalty in the form of monetary penalty in the amount of IDR 700 million;
2. Supplementary penalty in the form of:
   a. Compensation payment in the amount of IDR 85.49 billion; and
   b. Revocation of rights, whereby NKE is prohibited to participate in the government tender process for the period of 6 (six) months.

After such decision was rendered, NKE accepted the verdict and decided not to submit an appeal.

Conclusion

Through the NKE case, the Indonesian court has delivered a strong message and reminder to all corporations in Indonesia that Supreme Court Regulation 13/2016 is being enforced and therefore, criminal sanctions may be imposed on a corporation itself for its involvement in corruption.

While the corporation will not be subject to the penalty of imprisonment, one must take into consideration the other sanctions provided under the Anti-Corruption Law which can harm the business activity of the company, such as closure of business or revocation of rights. In addition, it is worth considering the adverse impact of "unwritten sanctions", such as reputational damage, decrease in share value, and loss of public trust, to name but a few, all of which are serious threats that may inevitably cause huge financial losses to the company.

With the NKE case as precedent, the KPK may become more active in pursing companies as suspects in corruption cases, and therefore, we encourage corporations doing business in Indonesia as well as its directors and officers to enhance its awareness with respect to all actions which may potentially violate the provisions of the Anti-Corruption Law.

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Vietnam

CPTPP's ENTRY INTO FORCE FOR VIETNAM – CHANGES IN INVESTMENT AND SERVICE SECTORS

包括的および先進的な環太平洋パートナーシップ協定(TPP11＝CPTPP)が 2019 年 1 月 14 日からベトナムに対しても適用が開始されている。本稿では、CPTPP に含まれ、ベトナムへの直接投資の可能性を広げうる、サービス分野での市場開放について概要を紹介する。

Introduction

On March 08, 2018, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"), one of the largest free trade agreements strategically setting trade terms among 11 countries, namely Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam was signed in Santiago, Chile. With respect to its contents, CPTPP incorporates the 30 chapters and 9 annexes of its predecessor – the Trans-Pacific Partnership (the "**TPP**"), but with exemptions allowing the signatories to temporarily delay 20 groups of obligations to assure the balance among countries upon the U.S.'s withdrawal from the TPP. The exemptions are concentrated in the chapters relating to intellectual property, government procurement, customs management, trading facilities, investment, cross-border service trade, financial service, telecommunications, environment, transparency and anti-corruption. However, the signatories' TPP commitments on opening market have been entirely inherited by the CPTPP. The CPTPP entered into force as of December 30, 2018 for the first six countries (i.e., Australia, Canada, Japan, Mexico, New Zealand and Singapore).

In the case of Vietnam, the country became the seventh member to ratify the CPTPP through Resolution no. 72/2018/QH14 of the National Assembly dated November 12, 2018. By notifying its adoption of the CPTPP to the Depositary (New Zealand) on November 15, 2018 pursuant to Article 3.2, the CPTPP entered into force for Vietnam on January 14, 2019.

The CPTPP is expected to increase Vietnam's total export value, gradually enhance the country's participation in the global and regional supply chain, improve transparency, and develop the labor market. For foreign investors from other signatory countries, the CPTPP is an opportunity to do business in Vietnam as the country has made a commitment to broadly open its market. Within the scope of this article, we will focus on the changes that the CPTPP will bring in relation to the investment and service sectors of Vietnam.

Changes in Investment and Service Sectors

Vietnam's commitments in relation to investment and service sectors are provided for in Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), and the respective Annexes of the CPTPP, which are unchanged in comparison with TPP.[1] For the investment sector, the CPTPP stipulates four basic principles, comprising of National Treatment (Article 9.4), Most-Favored Nation Treatment (Article 9.5), Performance Requirements (Article 9.10) and Senior Management and Boards of Directors (Article 9.11). On the other hand, for the service sectors, in lieu of the principles of Performance Requirements (Article 9.10) and Senior Management and Boards of Directors (Article 9.11), the principles of Market Access (Article 10.5) and Local Presence (Article 10.6) are stipulated. All signatories are obliged to comply with these principles from the time the CPTPP has entered into force for such country.

Notwithstanding the foregoing basic principles, the CPTPP permits each signatory to reserve its domestic law, regulation, procedure, requirement or practice (collectively referred to as "**Measures**"), which are not in conformity with the general commitments. For each signatory, all of its reserved Measures in relation to the investment and service sectors are expressly declared in the form of a "Non-Conforming Measures" (**"NCM**") list set forth in the respective Annex I and II of the CPTPP. In particular, Annex I includes existing NCM that are provided for under the prevailing laws, regulations and policies of each signatory, which each country will continue to apply as described in the Annex. In case where any of these NCM is amended, such amendment must comply with the *standstill*

1 For the purpose of this article, we do not discuss about the commitments in relation to the services separately provided for in other specific chapters, including Chapter 11 (Financial Services) and Vietnam's Annex III (Schedule for Vietnam), Chapter 13 (Telecommunications).

mechanism (i.e., neither signatory will impose any future Measure that is more restrictive than those that were indicated in Annex I) and *ratchet mechanism* (i.e., signatories will be bound by any future Measure that is more favorable and cannot subsequently withdraw or make the Measure less favorable). Meanwhile, Annex II lists the long-term NCM which a signatory intends to maintain, and each signatory may either set forth regulations contrary to the basic principles of CPTPP or entirely restrict foreign investment in reserved sectors.

Pursuant to Annex 10-C of the CPTPP, the other signatories to the CPTPP have agreed to exempt Vietnam from complying with the ratchet mechanism for three (3) years from the CPTPP's entry into force for the country (i.e., until January 14, 2022). Within such transitory period, Vietnam may make amendments that are less favorable than the NCMs of Annex I or NCMs imposed by any local government to the extent that such amendments do not decrease the conformity of the Measures which existed as of January 14, 2019. If such less favorable amendments have been made, Vietnam will not be allowed to withdraw any rights or benefits granted to a foreign investor of other signatory countries under the previous Measures, where such foreign investors have already taken specific actions to do business in Vietnam. *For example*, in relation to real estate services, foreigners may invest in residential and commercial real estate brokerage under Annex I. Relying on such commitments, let us assume that a Japanese investor submitted an application to purchase shares in a Vietnamese company providing real estate brokerage service. However, after such application, Vietnam amends the law regulating the real estate business and such amendment prevents enterprises with foreign investors from providing real estate brokerage services. In such case, the Japanese investor's application for purchasing shares in the Vietnamese company will not be affected by the amendment of the law.

Comparing Vietnam's World Trade Organization (**"WTO**") Schedule of Specific Commitments in Services and existing laws and regulation before the entry into force of the CPTPP, it is clear that under the CPTPP, Vietnam has undertaken to open the service market more broadly than before. Based on Annexes I and II of the CPTPP, changes in relation to foreign investment by other signatories into several particular service sectors of Vietnam may be summarized as follows:

Service Sector	Investment Conditions prior to CPTPP's Entry into Force[2]	CPTPP Commitments
Advertising	Joint venture only, of which capital contributed by foreign investors is not limited.	As from January 14, 2019, wholly foreign invested enterprise is permitted.
Facilities-based telecommunications	Joint venture and purchase of shares in a Vietnamese enterprise duly licensed in Vietnam, of which capital contributed by foreign investors is limited at 49% for basic services and 50% for value-added services.	Joint venture and purchase of shares in a Vietnamese enterprise duly licensed in Vietnam is allowed up to 51% for value-added services from January 14, 2019, and up to 65% by January 14, 2024.
Non facilities-based telecommunications	Joint venture and purchase of shares in a Vietnamese enterprise duly licensed in Vietnam, of which capital contributed by foreign investors is limited at 65% for basic services (70% in case of virtual private network) and value-added services.	By January 14, 2024, wholly foreign invested enterprise is permitted.
Sound-recording	Unbound under WTO Schedule on Specific Commitment in Services, for which foreign investment in the sub-sector was at the sole discretion of Vietnam.	As from January 14, 2019, foreign equity is limited at 51%.
Distribution	Establishment of outlets for retail services beyond the first outlet (except for outlets of less than 500m^2 established at a shopping mall and not categorized as convenient store or mini supermarket) is	As from January 14, 2024, foreign invested enterprise will not be required to pass ENT when opening outlets for retail beyond the first outlet. As from January 14, 2019, foreign-invested

2 The conditions prior to CPTPP's entry into force are based on Vietnam's WTO Schedule of Specific Commitments in Services and the country's existing laws and regulations.

	allowed on the basis of an Economic Need Test ("**ENT**"). Distribution of cigarettes and cigar, books, newspapers and magazines, video records, precious metal and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar is unbound under WTO Schedule on Specific Commitment in Services, for which the distribution of these goods are at the sole discretion of Vietnam.	enterprise is allowed to distribute sugar and rice.
Theater, live bands and circus services	Joint venture, of which capital contributed by foreign investors is limited at 49%.	As from January 14, 2022, foreign capital contribution will increase up to 51%.
Electronic games business	Business cooperation contract or joint venture of which capital contributed by foreign investors is limited at 49%.	As from January 14, 2024, wholly foreign invested enterprise will be permitted.
Customs clearance	Joint venture only, of which capital contributed by foreign investors is not limited.	As from January 14, 2019, wholly foreign invested enterprise is permitted.
Higher education, adult education and other education services (including foreign language training)	Wholly foreign-owned education entities in the fields of technology, natural science and technology, business administration and business science, economics, accounting, international law and language training is allowed.	As from January 14, 2019, foreign investment is not permitted in the fields of national security, defense, political science, religion, Vietnamese culture and other fields of study necessary to protect Vietnamese public morals.

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Thailand

NEW 2019 REGULATIONS ON CAR LICENSE PLEDGE BUSINESS (CAR TITLE LOAN)

タイでは、消費者向けの融資手段として、自動車担保ローンが広く利用されている。この自動車担保ローンについては、これまで業法上の規制は課せられておらず、利息料率や債権回収手段を巡ってローン事業者と消費者の間でトラブルが生じるケースも少なくなかった。かかる状況を受け、2019 年 1 月に財務省から新規則が発行され、当該ローン事業を営む事業者に対して、タイ中央銀行を通じて財務省からライセンスを取得することが義務づけられることとなった。

Introduction

At the end of January 2019, the Bank of Thailand issued specific controls which regulate the business of providing car title loan[1]*, commonly known as "car4cash" in Thailand. Although the car title loan business has been one of Thailand's largest consumer lending industries, it was previously among the least regulated. However, government authorities have since shown their willingness and interest to regulate this industry with the passage of the new regulations. The new regulations depart from the traditional pledge system which was not an effective business model for borrowers. The new regulations also provide clarity on the rights and duties of both business operators and borrowers, but it remains to be seen how the new regulation will truly improve the market conduct in practice.*

Traditional Debt Security Systems under the Thai Civil and Commercial Code

Traditionally, two (2) types of debt security systems exist under the Thai Civil and Commercial Code (the **"CCC"**), i.e., (i) pledge for movable property under Section 747 and (ii) mortgage for immovable property under Section 702[2].

Where cars are used as the debt security, the pledge system poses a fundamental problem, as the pledger is required to turn over the possession of the car to constitute the pledgee. As a result, the pledger is not able to utilize the car which was pledged as the debt security. Because of this, the mortgage system appeared to provide a better alternative since a mortgagor can retain possession of the car during the term of the mortgage. Under the Thai legal system, certain kinds of movable property, such as machinery, marine vessels, cattle and horses can be mortgaged under special statutes. Cars can also be mortgaged under the amendment of the Car Act in 2008. However, there has been no sub-regulation enacted which identifies the regulator and sets forth the system for car mortgages, nor does it appear that such sub-regulation will be enacted in the near future. Consequently, the car mortgage system is still not legally recognized in Thailand.

Due to the limitations of the traditional debt security systems under the CCC, it has become necessary for lending business operators, especially non-bank operators, to provide a method by which a borrower will be able to use cars as debt security, without depriving him of the car's utility.

Common Scheme Used in Car Title Loan: the "Car License Pledge"

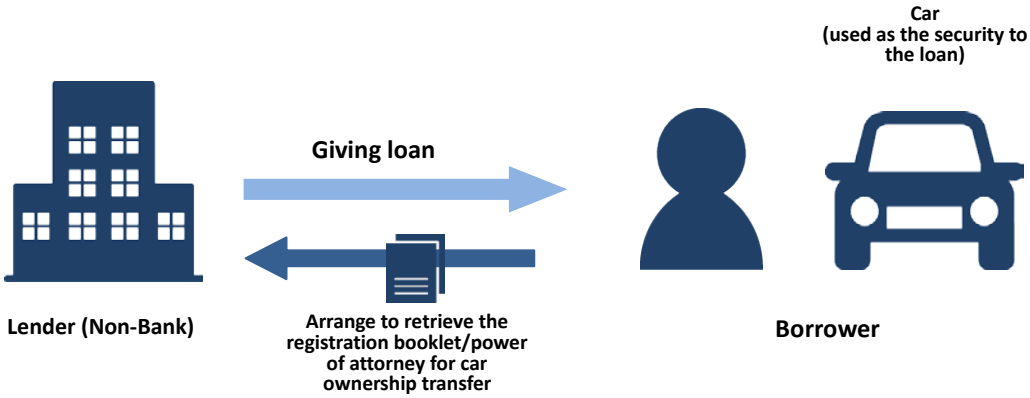
In the past, there have been several innovations in the car title loan business which enabled borrowers to use cars as a debt security. One of the widely-used schemes is the car title loan commonly known as the **"Car License Pledge"**. Under the Car License Pledge, the lender (usually, a non-bank lending business operator) will execute a loan agreement with the borrower. The amount of loan credit extended will be based on the appraised value of the car owned by the borrower. Both parties will then execute an addendum which stipulates a condition that, in the event of the borrower's default, the ownership of the car will be transferred to the lender.

In order to ensure this, the lender will require the borrower to turn over the car registration booklet and prepare in

1 In this article, "car title loan" specially means a loan where a borrower receives cash by using his/her car as collateral to the loan, not to be confused with a "car loan" where the borrower receives a loan in order to purchase a car.

2 Under the CCC, a "pledge" means "a contract whereby a person called a pledger, delivers to another person, called a pledgee, a movable property as security for the performance of an obligation". "Mortgage" means "a contract whereby a person, called a mortgagor, conveys the conditional right of the ownership on a property to another person, called a mortgagee, as security for the performance of an obligation, without the need to deliver the property to the mortgagee".

advance a power of attorney for the car transfer. If the borrower defaults, the lender will present such power of attorney to the Car Registrar Office in order to effect the transfer of the car ownership to the lender. After the car ownership has been transferred to the lender, the lender will then put the car up for sale or auction as a means to obtain the debt repayment.



Simplified Diagram for Car License Pledge Scheme

It must be noted that although the scheme is referred to as a "Car License Pledge", this so-called "pledge" should not be confused with the legal concept of pledge referred to in the CCC, since the borrower still retains possession of the car. Only the registration booklet is handed over to the lender, and such booklet only represents the tax registration of the car and is not equivalent to car ownership or title.

The Car License Pledge benefits low-income consumers who cannot offer substantial collateral by allowing them the means to quickly access loan facilities. According to the information disclosed by the Bank of Thailand (the **"BOT"**), as of the year 2018, there have been over three million borrowers who utilized the Car License Pledge and over a thousand loan providers which engaged in this type of business in Thailand. However, despite the high demand for the Car License Pledge and its importance to the Thailand economy, the car title loan business was not specifically regulated until the amendment of the law in 2019.

Background of the Car Title Loan Business Regulations

Prior to the enactment of the 2019 regulations, the lending business carried out by non-bank operators was generally regulated under the (i) Ministry of Finance (the "**MOF**") Notification re: Business Subject to Approval According to Section 5 of the Revolutionary Council Decree No. 58 (Personal Loan Under Supervision) as amended on 17 December 2015, and (ii) BOT Notification No. FPG. 15/2560 re: Regulations, Procedures and Conditions for Undertaking Business of Personal Loan under Supervision for Non-Bank Operator dated 17 July 2017 (the "**Notifications**").

Under both Notifications, a non-bank lending business operator who provides "personal loan" had to obtain a lending license from the MOF and subject to the supervision of the BOT. Such business operator was also required to set up customer protection mechanisms such as disclosure of loan terms and conditions and capped amount of loan, etc.. However, the definition of "personal loan" under these Notifications were limited to loans given ***without any security***. Such definition provided a loophole for a car title loan businesses to operate without need for a license from the MOF, since the Car License Pledge was considered as personal loan ***with a security***, i.e., the personal loan is secured by the borrower's car ownership as the "collateral".

Because a car title loan business, particularly the Car License Pledge business, was not effectively regulated, several lawsuits were initiated by borrowers against prominent Car License Pledge providers for deceptive interest rates and immoral debt collection practices. This prompted government authorities to enact new regulations for the Car License Pledge business.

Car License Pledge Business Regulations

On 31 January 2019, MOF Notification re: Business Subject to Approval According to Section 5 of the Declaration of the Revolutionary Council Decree No. 58 (Personal Loan Under Supervision) Vol. 3 (the **"2019 MOF Notification"**) was passed to finally regulate the Car License Pledge business.

Under the 2019 MOF Notification, a Car License Pledge is defined as "a loan secured by car registration", meaning "lending to a person who has the ownership of the car which the business operator will receive the car registration booklet, or arrange to have an agreement, document or evidence which will enable the car owner to transfer the car ownership in advance in order to secure the loan, or arrange to have another agreement, document or evidence". The persons who engage in the said business must obtain license from the MOF through the BOT. In order to obtain the license, the applicant must be a private or public company limited and must have paid-up registered capital of not less than fifty (50) million Baht (approximately 1.6 million USD).

After the lender has obtained such license, it shall be required to comply with certain obligations stated in further regulations issued by the BOT. Some examples of these obligations are:

(i) Per the information-based lending principle, the amount of loan must correspond with the borrower's income and shall not exceed five (5) times of the borrower's income. The objectives of the loan, ability and willingness to pay, etc., shall also be taken into account to determine the amount of loan;

(ii) The sum of interest, payment delay penalty, service charge collected from the borrower shall not exceed 28% per annum;

(iii) The lender may collect actual expense in addition to interest and fees in (ii); however, such amount must be actual expenses and reasonable. Moreover, it must fall within the expense item which may be prescribed by the BOT;

(iv) The borrower has the right to make full debt repayment before the end of lending term without being subject to early payment penalties or expenses;

(v) The lender shall provide the borrower with loan information which is sufficient and reasonable for the borrower to make an informed decision whether to take the loan such as the interest and penalty rate, including the detailed schedule of repayment for each installment;

(vi) In the event of default by the borrower, the lender shall inform the borrower in advance before enforcing the security (i.e., selling the car), in order to give the opportunity for the borrower to examine the information or dispute such sale;

(vii) In case the price of the car sold exceeds the loan amount, the lender must return such surplus amount to the borrower; and

(viii) The lender shall file an operational report every six months and submit its financial statements within 180 days from the end of each fiscal year to the BOT.

The 2019 MOF Notification allows an existing Car License Pledge business operator who has been operating without a license to obtain the required license from the MOF until 1 April 2019. The 2019 MOF Notification also provides a grace period to licensed business operators, who have to fulfill the higher registered capital requirement of fifty (50) million Baht, until 31 January 2020 to comply with the same.

Conclusion

This 2019 MOF Notification marks one of the most recent efforts of the Thai government to reform its traditional debt security systems and keep it up-to-date with the current market practice. This new regulation definitely sends a signal and reminder to lenders to be more fair and reasonable in their car title loan lending business operations. Existing and future business operators should be aware of the legal requirements to prevent any non-compliance issues.

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