

NO&T Thailand Legal Update

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I. Revision of the Requirements regarding the Controlled Contract to Hire Purchase Cars and Motorcycles

1. Background

On 12 October 2022, the Notification of the Contract Committee re: Prescribing Hire Purchase Business for Cars and Motorcycles as a Contract Controlled Business of 2022 (the “**2022 Notification**”) was published in the Government Gazette and will become effective after 90 days from the date of publication in the Government Gazette, which will be on 10 January 2023. The 2022 Notification will repeal and replace the Notification of the Contract Committee re: Prescribing Hire Purchase Business for Cars and Motorcycles as a Contract Controlled Business of 2018 (the “**2018 Notification**”). The intention behind the enactment of the 2022 Notification was to provide a solution for consumers affected by the COVID-19 pandemic and in debt from the hire purchase of cars and motorcycles.

In principle, both the 2018 Notification and the 2022 Notification regulate the hire purchase agreement for cars and motorcycles between the business operator and the individual person (the “**Agreement**”), which is a controlled contract under the Consumer Protection Act of 1979 (the “**CPA**”), provided that the cars or motorcycles hire purchased are only for personal use and not for transportation in a commercial manner. However, the 2022 Notification stipulates several new requirements and criteria for the Agreement, which are different from the 2018 Notification. In this article, we aim to shed light on material changes made to the 2018 Notification by the 2022 Notification.

2. Summary of material changes made by the 2022 Notification

To illustrate, we set out in the table below the summary of material changes with respect to the requirements and criteria for the Agreement made to the 2018 Notification by the 2022 Notification.

No.	Matter	2018 Notification	2022 Notification
1.	Maximum chargeable effective interest rate for the Agreement for	It is silent on this matter.	The maximum chargeable effective interest rate per annum shall vary for each type of vehicle,

No.	Matter	2018 Notification	2022 Notification
	each type of vehicle		as follows: <ul style="list-style-type: none"> - not more than 10% for new cars; - not more than 15% for used cars; and - not more than 23% for motorcycles. The above mentioned rates shall be subject to review and adjustment to correspond with the national economic conditions every 3 years. (Clause 5(1) b. of the 2022 Notification)
2.	Minimum discount on interest which is not yet due in the case of: <ul style="list-style-type: none"> (i) early payment of the hire purchase price in full; or (ii) the purchase of the cars or motorcycles by the hirer or the guarantor after the business operator terminates the Agreement 	Discount is at the rate of not less than 50% of the interest not yet due. (Clause 4(5) a. and Clause 4(10) of the 2018 Notification)	Discount varies upon the amount of installments paid, as follows: <ul style="list-style-type: none"> - not less than 60% of the interest not yet due in the case where the installments paid do not exceed 1/3 of the total installments stipulated in the Agreement; - not less than 70% of the interest which is not yet due in the case where the installments paid are from 1/3 but not exceeding 2/3 of the total installments stipulated in the Agreement; and - a waiver of all the interest not yet due in the case where the installments paid exceed 2/3 of the total installments stipulated in the Agreement. (Clause 5(4) a. and Clause 5(9) of the 2022 Notification)
3.	Amount owed by the hirer in the case where the Agreement is terminated by the business operator and the proceeds from the sale of the car or motorcycle by a public auction is less than the outstanding debt under the Agreement	<ul style="list-style-type: none"> (i) the outstanding installments due; (ii) the installments which are not yet due; (iii) the interest not yet due; and (iv) penalties, official fees or any expenses actually and reasonably incurred from the debt collection process. (Clause 4(5) c. of the 2018 Notification)	<ul style="list-style-type: none"> (i) the outstanding installments due; (ii) the installments which are not yet due; and (iii) official fees or any expenses incurred from the debt collection process prior to the termination of the Agreement. (Clause 5(4) c. of the 2022 Notification)
4.	Rate of penalty in case of default in payment of installments by the	The business operator may impose upon the hirer the penalty in case of default in	The business operator may impose upon the hirer the penalty in case of default in

No.	Matter	2018 Notification	2022 Notification
	hirer	payment of installments at the effective interest rate plus 3% per annum, however the rate shall not exceed 15% per annum in total. (Clause 5(2) of the 2018 Notification)	payment of installments at the rate of not exceeding 5% per annum of the default payment. (Clause 6(2) of the 2022 Notification)

In addition to the material changes set out in the table above, the 2022 Notification makes several other changes to the 2018 Notification for the benefit of the hirer and the guarantor (if any). Furthermore, the 2022 Notification also contains other general requirements for the Agreement which the business operator shall comply with.

Notably, any business operator who fails to deliver the Agreement containing the terms and provisions in compliance with the 2022 Notification shall be liable for imprisonment for a period not exceeding 1 year or a fine of not more than THB 200,000 or both.¹ Therefore, failure to comply with the above requirements regarding contract terms would be subject to such penalty. In the case where such offence is committed by a juristic person through the order or the omission of the director, manager or any responsible person of the juristic person, such persons shall also be liable for the penalty for such offence.²

3. Conclusion

The 2022 Notification will only be applicable to Agreements executed after the 2022 Notification becomes effective and will not affect Agreements executed before the effective date. Thus, it is important for car or motorcycle hire purchase businesses to ensure that their Agreements will comply with the 2022 Notification once it becomes effective.

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¹ Section 57 of the CPA

² Section 59 of the CPA



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II. Draft of the PDPC Notification on International Transfers of Personal Data

1. Background

In September 2022, the Personal Data Protection Committee (“**PDPC**”) made publicly available the Draft Notification of the PDPC re: Determination of Rules and Principles of Appropriate Personal Data Protection for International Transfers B.E. ... (“**Draft Notification**”), which had already passed the public hearing process.

The Draft Notification aims to clarify the requirements of the Binding Corporate Rules (“**BCRs**”) and the appropriate safeguards, including standard contractual clauses (“**SCCs**”), which shall be provided by the data controller or the data processor before transferring the personal data to overseas countries under Section 29 of the Personal Data Protection Act of 2019 (“**PDPA**”).

In this article, we aim to provide a brief summary of the requirements for the BCRs and the appropriate safeguards, including SCCs, under the Draft Notification.

2. General principle for the international transfer of personal data

In principle, a data controller may transfer personal data to a recipient in overseas countries or an international organization if the destination country has an adequate data protection standard that is in compliance with the criteria prescribed by the PDPC.³ Until present, the PDPC has not issued the notification in relation thereto.

Therefore, until now, practically, a data controller is able to transfer personal data internationally only if the transfer is necessary for the performance of contract to which the data subject is the party or the performance of the data subjects' request prior to such contract, the data subject has explicitly consented to the proposed transfer of personal data after having been informed of the inadequate data protection standard of the destination country or the international organization which receives the personal data, or the transfer is necessary for the compliance with a legal obligation,⁴ etc.

In addition to above, a data controller or a data processor in Thailand is able to rely on the BCRs⁵ or the appropriate safeguards⁶ approaches for the transfer of personal data to foreign countries. Subject to compliance with the requirements of the BCRs or the appropriate safeguards, the data controller or the data processor may make such transfer without ensuring the adequacy of the data protection standard of the destination country or without obtaining explicit consent from the data subject.

³ Section 28 of the PDPA

⁴ Section 28 of the PDPA

⁵ Section 29 paragraph 1 of the PDPA

⁶ Section 29 paragraph 3 of the PDPA

3. Overview of the requirements for the BCRs and the appropriate safeguards

The overview of the requirements of the BCRs and the appropriate safeguards are as follows:

1. BCRs

The BCRs may be provided for the transfer of personal data particularly to the affiliates in the foreign countries.⁷

Under the Draft Notification, the BCRs must contain at least the following details:

- (1) effectiveness and legal binding effect applicable to entities of the affiliates, including their employees, staffs, and personnel related to the transferor and the transferee of personal data, the transfer of personal data, and the receipt of personal data;
- (2) rights of the data subject with respect to the personal data as stipulated under the PDPA and other related sub-regulations; and
- (3) measures for the protection of personal data in aspects of people and process, and standard security measures for personal data in the technological process in accordance with the rules, procedures, and notifications to be prescribed by the PDPC.

The BCRs must be submitted to the PDPC for their verification and certification.⁸

2. Appropriate safeguards

Under the Draft Notification, the appropriate safeguards may be provided in the following forms:

- Standard Contractual Clauses (“SCCs”), i.e., contractual clauses agreed upon between the transferor and the transferee of personal data to ensure the establishment of the due personal data protection standard by stipulating obligations of the parties to the SCCs and the protection of the data subject’s rights;
- Code of Conduct, i.e., a code of conduct prescribing obligations of the transferor of personal data and the transferee of personal data overseas to be prepared by, among others, trade associations; or
- Certification, i.e., certification on the personal data protection standards to establish appropriate safeguards thereof to be certified by accredited certification bodies.

Each form of the appropriate safeguards must contain at least the following details:

- (1) effectiveness and legal binding effect applicable to companies, juristic persons, individuals, including relevant members, consignor and consignee of personal data, transferor and transferee of personal data, or the business of the data controller or the data processor. Such legal binding effect must also extend to relevant employees, staffs, and personnel of the above-mentioned entities;
- (2) rights of the data subject with respect to the personal data as stipulated under the PDPA and other related sub-regulations; and
- (3) measures for the protection of personal data in aspects of people and process, and standard security measures for personal data in the technological process in accordance with the rules, procedures, and notifications to be prescribed by the PDPC.

The appropriate safeguards must be certified by the data controller and the data processor and must be subsequently submitted to the PDPC.⁹

4. Conclusion

After the PDPC considers comments from the public hearing, changes may be made to the Draft

⁷ Section 29 paragraph 1 and Clause 5 of the Draft Notification

⁸ Clause 6 of the Draft Notification

⁹ Clause 7 of the Draft Notification

Notification. The tentative timeline for the official announcement of such Draft Notification is not confirmed.

Although the Draft Notification is uncertain, it can illustrate the BCRs and appropriate safeguards approaches which may be alternatively performed by the data controller or the data processor in Thailand for the transfer of personal data to foreign countries, regardless of the adequacy of the data protection standard in the destination countries.

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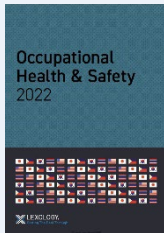
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Other Publications

Recently we also featured in a number of articles and books covering a wide range of legal areas to address the latest legal issues. Please follow the link below to access each publications.



Lexology GTDT - Occupational Health & Safety 2022 – Thailand

This article enabling side-by-side comparison of local insights into legislation, regulations and codes of practice; employer duties and responsibilities; worker duties and responsibilities; workplace hazards and risk management; liabilities, enforcement and penalties; and recent trends.



Lexology GTDT - Real Estate 2022 – Thailand

This article provides comparative analysis of real estate regulations in different jurisdictions worldwide, with answers to crucial questions in key areas such as: acquisition of real estate, including recording conveyance documents, foreign investors, investment entities, leases and mortgages and contracts and financing, including liens, interest, enforcement, protection of collateral, covenants and bankruptcy.

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