

THE CONSUMER FINANCE LAW REVIEW

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THE CONSUMER FINANCE LAW REVIEW

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EDITORS' PREFACE

Consumer choice for financial products and services is proliferating across global markets. The ability to reach consumers at any time on their mobile devices and tablets, or on their in-home computers has helped attract substantial capital investment in consumer financial services.¹ Consumers in many diverse markets, with varying degrees of size, sophistication and modernisation, can now access myriad financial products and services with just a swipe, tap or click. Traditionally cash-based economies now also have a wide range of options for electronic payments, alternative lending and other banking and financial services.

The staggering capital investment has, in turn, attracted non-traditional providers to the consumer financial services marketplace. From garage-based start-ups to billion-dollar technology firms, companies that previously focused on delivering smartphones, social media platforms or internet-browsing capabilities are developing innovative approaches to meet consumers' rapidly evolving demands. Traditional market participants, including banks and other non-bank financial service providers, have responded by innovating to improve their product and service offerings to retain and strengthen their customer relationships.

At the same time, there have been significant changes in the political landscape in various global markets, and these changes may affect cross-border investments and payments, broader investments in financial technology, and the nature of regulatory and enforcement oversight.

The increasing rate of innovation in consumer financial services, the changing profile of market participants, and the evolving political landscape have given rise to new legal questions or a different spin on longstanding legal theories. This country-by-country survey of recent developments in consumer financial services considers how these new and different legal theories are being addressed in 14 jurisdictions across the globe, with particular attention to payments, deposits, and revolving credit and instalment credit arrangements.

1 See 'Fintech and the evolving landscape: landing points for the industry,' Accenture, 13 April 2016, available at: www.fintechinnovationlablondon.co.uk/pdf/Fintech_Evolving_Landscape_2016.pdf.

One fundamental question confronting policymakers around the world is what entity in the financial value chain should be viewed as the provider of the financial product or service. In the alternative lending context, for example, non-bank platform operators are partnering with banks to originate loans funded on the bank's balance sheet, on the balance sheet of the platform provider, or through raising capital from investors of varying degrees of sophistication. These 'marketplace lenders' in many cases are not lenders at all, but merely technology service companies providing a platform that enables lenders to more efficiently source capital. In other cases, regulators and courts have taken the view that the marketplace lender is leveraging a bank partnership to take advantage of the special powers of a regulated bank, without itself being subject to such regulation. Courts and regulators are taking varying approaches to determine the rights and obligations of each entity participating in an increasingly disintermediated market.

In the payments context, policymakers have taken varying approaches to regulating electronic money schemes, as well as payment interfaces that rely on established payment networks, such as the payment card networks or batch processing networks. These approaches require careful consideration of the precise flow of funds to determine whether the payment provider accepts liability to one or more participating consumers.

In addition, increasing reliance on third-party service providers has led banking regulators to focus on banks' vendor risk management programmes. Many regulators have created an expectation that banks have an effective process for managing service provider relationships, including thorough due diligence, review of policies and procedures, ongoing oversight and monitoring, and contractual provisions related to regulatory compliance. These expectations are imposing significant costs on banks and their downstream service providers.

Other legal issues are affecting payment providers, consumers and regulators as payment system stakeholders pursue faster payments. Jurisdictions around the world are at varying stages of developing or implementing a ubiquitous, secure and efficient electronic payment system. Stakeholders are pursuing faster payments as a means to make more convenient, timely and cost-effective payments, including cross-border payments. Well-established legal principles, including settlement finality and consistent consumer protections, must be considered anew in a faster payments context.

Established payment system stakeholders, including payment card networks, are also refining fraud protections and data security measures to address an evolving risk landscape. For example, tokenisation in the payment-card space is one fraud prevention measure that is being implemented by card issuers, card networks and mobile wallet providers. As another example, EMV chip cards, firmly entrenched in many jurisdictions, are still in the process of being deployed in certain large card markets.

The evolution of consumer demands also raises new and interesting legal questions. For example, consumers and service providers are seeking to access and aggregate account or transaction data from multiple financial institutions. Now, a number of apps on browser-based tools allow consumers to aggregate account information and receive financial advice and personal wealth management services. These services give rise to significant legal issues, including matters related to privacy, data security, data ownership and consumer choice.

Cybersecurity and data security are, of course, a core concern in consumer financial services, however they are delivered. Regulators in many jurisdictions are tending toward more prescriptive requirements, including specific security controls, as well as aggressive enforcement.

The entry of new market participants also raises questions related to fair access to financial services for consumers. For example, marketplace lenders are using new and alternative sources of data to evaluate potential borrowers. The data may not be as thoroughly tested or as demonstrably statistically sound as the credit data used by traditional lenders. As a result, lenders must carefully consider whether use of alternative data sources has any unintended adverse impact on classes of potential borrowers. In addition to considering the potential adverse impact of the use of alternative data on potential borrowers, regulators and courts in some jurisdictions are revisiting the classes of consumers that are protected by fair lending or equal credit opportunity laws.

Further, consumer protection authorities continue to focus on combating unfair trade practices, particularly with respect to new market entrants that may not have the same culture of compliance as traditionally regulated financial institutions. Prohibitions on unfair trade practices have been enforced on a broad range of market participants in consumer financial products and services, including payments, credit cards and other credit products, as well as deposit products.

Notwithstanding the many legal issues, this is a time of great choice for consumers and exciting opportunity for financial services providers. Advancements in technology have given consumers in developing markets, as well as unbanked or under-banked consumers in more well-developed markets, access to financial products and services previously unavailable to them. Therefore, regulators and consumer protection agencies are challenged to ensure financial stability and a level playing field, while also promoting consumer choice.

This survey of consumer finance law describes the legal and regulatory approaches taken in the jurisdictions covered. Each chapter addresses the key characteristics of, and current climate within, a particular jurisdiction. Although payments, lending and deposits are the focus of this survey, other financial products and services are discussed where relevant.

Richard Fischer, Obrea Poindexter and Jeremy Mandell

Morrison & Foerster LLP

Washington, DC

February 2017

Chapter 12

THAILAND

Sui Lin Teoh and Saroj Jongsaritwang¹

I OVERVIEW

Consumer finance in Thailand has been growing steadily in recent years. According to statistics from the Bank of Thailand (BOT), there are more than 2 million personal loan accounts and more than 20 million credit cards issued to consumers as at September 2016.² While financial services are mostly provided to consumers by financial institutions under the supervision of the BOT, certain services may also be provided by non-financial institutions. These non-financial institutions, however, are regulated under rules and regulations issued by the BOT to control the provision of restricted services, such as personal loans, credit cards, and e-payment services.

With the emergence and increased use of the social media, online shopping and online trading platforms, channels of financial services have become broader so as to provide consumers access to the most convenient and up-to-date range of services. Financial services are currently available to and accessible by consumers through various channels, both online and offline. Traditional payment systems such as over-the-counter and cash payments are expected to be gradually reduced while usage of online channels like mobile applications and e-Money are expected to increase. This is in accordance with the National e-Payment Master Plan initiated and implemented by the Thai government since 2015.

II LEGISLATIVE AND REGULATORY FRAMEWORK

i Legislation

The main pieces of legislation regulating consumer payment, deposit and lending services in Thailand are the Financial Institutions Act 2008 (FIA), the Bank of Thailand Act 1915 (BOTA), and the Civil and Commercial Code (CCC). The FIA and the BOTA, including

1 Sui Lin Teoh and Saroj Jongsaritwang are partners at R&T Asia (Thailand) Limited.

2 Detailed statistics can be found at www.bot.or.th.

subsidiary rules and regulations issued thereunder, generally prescribe the scope of permitted and prohibited activities for service providers providing payment, deposit and lending services to customers, whereas the CCC governs the legal relationship between consumers and service providers in respect of the services provided.

The issue of consumer protection is also becoming increasingly important, and protection is afforded mainly under the Consumer Protection Act 1979 (CPA), pursuant to which minimum standard terms and conditions must be reflected in certain types of financial contracts, and the Debt Collection Act 2015 (DCA), which was recently enacted to establish fair collection practices and to penalise unfair deceptive and violent practices in debt collection.

ii Regulation

The BOT is the main authority in charge of supervising and examining financial institutions (and non-financial institutions in certain cases, e.g., granting personal loans and credit cards). Where financial institutions violate or fail to comply with the FIA, the BOT has the power to take certain action, for example, issuing a warning, demanding compliance with relevant requirements, or ordering the closure of offending institutions.

In January 2012, the Financial Consumer Protection Centre (FCC) was established by the BOT to serve as a one-stop service centre to handle enquiries and complaints regarding financial products and services provided by service providers, as well as to resolve problems, coordinate, and track results of complaints. The FCC generally forwards a consumer's complaint together with its suggestions to the relevant department within the BOT for consideration. Consumers are easily able to file a complaint with or contact the FCC for consultation through several channels (for example, doing so by phone, fax or email, or by visiting the BOT's offices).

The BOT is authorised to regulate the operations of service providers, and has the power to take disciplinary action in the event of non-compliance. In the event of a dispute between the consumers and the service providers concerning their contractual relationship or the subject matter of a transaction (for example, a demand for repayment of a debt or return of property under leasing contracts), the parties would be required to commence court proceedings.

The Office of the Board of Consumer Protection (OBCP) is the authority that specifically oversees businesses and practices subject to the control measures under the CPA. In cases where a contract between the consumer and the service provider does not comply with any of the requirements under the CPA (for example, requirements as to the language of the contract), the consumer may refer the issue to the OBCP for its determination, or request that the OBCP file proceedings against the service provider on the consumer's behalf, as the case may be.

III PAYMENTS

i Overview

Payment methods available for consumers may generally be divided into cash payments and non-cash payments.

Cash payment

Cash payment is the most traditional, common and widely accepted payment method in Thailand. Payments made by consumers to recipients by cash are subject to and governed by the provisions under the CCC; for example, the provisions on contracts and debts. The BOT is the main authority responsible for the issue and management of banknotes and other government notes, as well as the formulation and implementation of monetary policies.

Non-cash payment

Apart from cash, payments can be made by paper-based methods. Examples of paper-based payments include payment orders, cheques, bills of exchange, and promissory notes. These modes of payments are governed by the CCC. Relevant service providers such as issuing banks would be subject to control measures under the rules and regulations announced by the BOT from time to time.

Non-cash payments may also be made on a paperless basis. In such cases, payment may be effected by the use of debit cards, credit cards, prepaid cards or other cards of a similar nature. There are also certain paperless payment services that do not require the use of any cards, and are available on electronic or online platforms accessible from computers, tablets, smartphones and other compatible devices. The most common services would be electronic fund transfers and online applications known under various names depending on the relevant service providers (e.g., mobile banking/m-banking, internet banking/i-banking or cyber banking). As no physical money is used or transferred in such transactions, the paperless payment would sometimes be referred to as 'e-money'.

Paperless payments are governed under the provisions concerning contracts and debts under the CCC, together with the Electronic Transaction Act 2001, which is the main law regulating electronic transactions. Additionally, the Royal Decree Regulating Electronic Payment Services 2008 (REPS) was enacted to ensure additional security and credibility for services provided by electronic means. The REPS requires service providers to notify, register, or obtain permission from the BOT before providing each type of electronic payment services.

As cash management normally involves complicated and costly processes (such as handling, transporting, sorting out damaged or soiled banknotes for destruction, and implementing security measures throughout the said processes), there have been initiatives to reduce cash usage so as to minimise processing costs and expenses. Several cashless payment methods were therefore introduced and promoted by the Thai government and authorities in recent years.

ii Recent developments

National e-Payment Master Plan – PromptPay

The 'PromptPay' or 'Any ID' system (PromptPay) was officially introduced for the first time in July 2016. It allows a fund transfer to be made to or from a bank account by using a Thai ID card number or mobile phone number of the account owner (instead of a bank account number). A Thai national can choose to register his or her ID card number or mobile phone number with one bank account held with any bank in Thailand.

PromptPay was implemented under phase 1 of the National e-Payment Master Plan initiated by the Thai government in 2015, the main objective of which is to develop an integrated e-payment infrastructure for fund transfers and payment systems between the government and the private sector. In particular, the infrastructure is intended to be used as the main (and probably the only) channel through which tax and social security disbursement

payments will be made by the government to private sectors (i.e., the e-tax system and e-social welfare system, respectively). Ultimately, the government aims to transform Thailand into a 'cashless society' where purchases of goods and services are made by credit cards, electronic fund transfers, or any other methods under the Plan, in lieu of cash or cheques.

Migration of ATM and debit cards to Thai standard chip cards

With effect from 16 May 2016, all newly issued ATM and debit cards are required to be chip-based, as opposed to magnetic-strip-based. Approximately 60 million magnetic stripe cards currently in use must be switched to chip cards by the end of December 2019. The adoption of chip card technology is touted as one of the best measures to increase security and solving counterfeit card fraud issues encountered by the holders of magnetic stripe cards (which are easily skimmed for the purpose of making unauthorised payments and cash withdrawals). This measure should enhance consumer confidence in ATM and debit cards instead of cash, which is in line with the objective of the National e-Payment Master Plan for Thailand to become a 'cashless society'.³

IV DEPOSIT ACCOUNTS AND OVERDRAFTS

i Overview

Deposit accounts and overdrafts held by consumers with service providers fall within the scope of the provisions on Deposit under the CCC. In particular, the CCC sets out general provisions on deposit contracts, which govern and are applicable to deposits of all kinds of property, including money; and specific rules for the deposit of money (for example, the provision prohibiting depositors from demanding the return of the deposited money before the contractually agreed time).

Financial institutions (as depositories) are required to comply with the FIA and other rules and regulations concerning deposit accounts and overdrafts as may be imposed by the BOT from time to time. For instance, they are required to apply the same interest rates for the same category or type of consumers, and announce updated terms and conditions for deposit contracts for general consumers, interest rates, discounts, fees, penalties, formulae and calculation method, in a prominent place at their head office and all branches, to inform the public and consumers who contract with or use services at such office or branch.⁴

Since 2008, crucial security measures have been implemented through the enactment of the Deposit Protection Agency Act 2008 (DPAA). The Deposit Protection Agency was established under the DPAA with the key objectives of providing protection for deposits of money with financial institutions, enhancing confidence and stability in the financial institution system, and managing the insured financial institutions as well as liquidating insured financial institutions whose licences have been revoked.

Pursuant to the DPAA, consumers who have deposits with a financial institution whose licence has been revoked can submit a request to the Deposit Protection Agency within a specified time frame in order to claim their deposit. To be eligible to claim their deposit in this case, the consumers must be the owners of an eligible account (i.e., a Thai baht

3 BOT News Issue Nos. 22/2559 and 25/2559.

4 Notifications of the BOT Nos. SorNorSor. 80/2551, SorNorSor. 81/2551, and SorNorSor. 82/2551.

denominated bank account held in Thailand). Non-resident baht accounts opened for specific purposes in accordance with exchange control laws would not be deemed to be eligible bank accounts. Within 30 days of submitting the request, reimbursement of the aggregate sum of all eligible accounts will be made to the consumers; however, if the aggregate sum exceeds the limit on coverage currently in force (discussed in further detail below), reimbursement will be made up to such limit only.

ii Recent developments

The coverage limit for deposits reimbursable to consumers pursuant to the DPAA is planned to be gradually reduced from the full amount of the deposits to 1 million baht. The Royal Decree Prescribing the Coverage Limits of Deposits in General Cases 2016, which came into effect on 11 August 2016, sets out the annual coverage limits for 2016 to 2020, as follows:

- From 11 August 2016 to 11 August 2017, the coverage limit will be 15 million baht.
- From 11 August 2017 to 11 August 2018, the coverage limit will be 15 million baht.
- From 11 August 2018 to 11 August 2019, the coverage limit will be 10 million baht.
- From 11 August 2019 to 11 August 2020, the coverage limit will be 5 million baht.

V REVOLVING CREDIT

i Overview

Revolving credit may generally be granted to individual consumers in the form of credit cards and overdraft credit, both of which are governed under the section on loans in the CCC.

The credit card business is regarded as a business involving and widely affecting consumers and the public. The BOT has therefore sought to regulate the provision of such services by implementing certain requirements, such as the requirement that consumers must have an aggregate income of at least 15,000 baht per month or 180,000 baht per year) in order to be eligible to be issued with a credit card, requirements on credit limit determination and increase, and requirements on practices such as providing information to and contacting consumers, debt collection practices and fee rates). Importantly, interest rates applied on outstanding debts and overdue payments must not exceed the maximum rates specified by the BOT.⁵

In addition, credit card contracts are subject to control under the CPA and the Notification of the Contract Committee Prescribing Credit Card Business as a Business Subject to Contract Control 1999 (Notification on Credit Card Business). Essentially, this means that credit card contracts are therefore required to be made in accordance with the general requirements under the CPA, and specific requirements for credit card contracts under the Notification on Credit Card Business. General requirements include requirements that the credit card contracts contain necessary contract terms without which the consumers would be unreasonably disadvantaged; and that such contracts must not contain the terms that are unfair to consumers. Specific requirements stipulate that credit card contracts are required be in the Thai language, clearly visible and legible, and that characters are to be of a size not smaller than two millimetres. In addition, the contract must contain certain

5 Notifications of the BOT Nos. SorNorSor. 16/2552, SorNorSor. 17/2552, and SorNorSor. 18/2552.

significant information and conditions (for example, the condition that consumers have the right to terminate the contract for the credit card at any time, and are entitled, upon termination, to receive a refund of the service fees proportionate to the period for which the card has not been used). The requirements also prohibit contracts from containing onerous conditions, for example, stipulating that consumers must be liable for all expenses from the use of the credit card even where such expenses are incurred through no fault of the consumers.

Lastly, according to the Unfair Contract Terms Act 1997 (UCTA), where standard form contracts are used for credit cards, such contracts must not contain any terms that compel consumers to pay interest, a penalty, expenses or any other excessive sum, in the case of a default in payment; or provide for the charging of compound interest. Such terms would be regarded as unfair contract terms and thus only enforceable to the extent that they are deemed by a court to be fair and reasonable, taking into account the relevant circumstances.

ii Recent developments

Introduction of the DCA

Debt collection has been regulated and controlled under the DCA since 2 September 2015. First, the DCA stipulates that any person who wishes to operate a debt collection business must register the business with the Ministry of Interior, with the exception of debt collection by lawyers acting on behalf of their clients. The DCA stipulates, in particular, that debt collection activities must be carried out at the places and during the hours permitted by law (such as from Mondays to Fridays between 8am and 8pm). The Ministry of Interior also has the power to announce regulations setting out the maximum number of attempts that the collector is entitled to pursue or contact the debtor each day. There are certain prohibited practices and restrictions that, if breached, would amount to an offence under the DCA, such as:

- a* The use of violence or any act that causes injury to body, reputation or property of the debtors or consumers or other persons.
- b* The use of derogatory speech or language towards debtors or consumers or other persons.
- c* The notification or disclosure of the debt status of the debtors or consumers to persons who are not involved in the debt collection.
- d* Contacting the debtor by postcard, unsealed document, facsimile or other means that openly show that a collection of a debt is being pursued (except for the notification of enforcement of a mortgage in a newspaper in certain cases).
- e* Engaging in any acts that may be fraudulent or misleading (for example, using any statement, symbol or uniform that would create an impression that it represents the court, state official or governmental agency).

Penalties for breach include a fine, imprisonment, and revocation of the debt collector's licence.

Protection under the DCA are available only to individual borrowers and guarantors under credit agreements (including lending, credit card, hire-purchase, leasing transactions and any other similar transactions), but not to juristic persons of any kind. In the event that a debtor or consumer or any person receives treatment from a debt collector that is in violation of the DCA, such debtor or consumer or person is entitled to file a complaint to the Debt Collection Commission for further investigation.

VI INSTALMENT CREDIT

i Overview

Instalment credit granted to individual consumers would normally be categorised as secured and unsecured loans, as discussed below.

Secured loans

Secured loans include, for example, leasing or a financial lease, and loans granted for the purchase of assets whereby such assets are mortgaged back to creditors (e.g., houses, or condominium units). This type of loan is mainly governed by the provisions in the CCC on loans, contracts, and mortgages, and certain rules and regulations that may be imposed by the BOT from time to time on financial institutions to regulate their operations and to protect consumers. These include, for example, the requirement for two originals of a leasing agreement to be executed and for details of the price of the asset, the terms of the lease, the interest rate to be included in the agreement.⁶

Unsecured loans

Unsecured loans are monies granted to consumers based solely on the consumers' credit, without any security (referred to as 'clean loans'), the most common examples of which are personal loans (including education or student loans). The main provisions governing unsecured loans are found in the sections concerning loans in the CCC.

The granting of personal loans, whether by the financial institutions or non-financial institutions, is specifically controlled by the BOT under the relevant Notifications.⁷ In particular, the granting of personal loans must be in accordance with the requirements of the BOT (for example, loans must be granted to the customers who are deemed to be in a financial position to satisfy the debts, and the applicable interest rates and the aggregate amount of all interest, fees, and other penalties must not exceed the maximum rates specified by the BOT).

In addition, the business of lending to consumers by financial institutions is a controlled-contract business under the CPA and the Notification of the Contract Committee Re: the Designation of the Business of Lending by Financial Institutions to Consumers as a Business that is Subject to Contract Control 2001 (the Notification on Lending Business). As with a credit card business, personal loan contracts are required to be made in accordance with the general requirements under the CPA (see Section V.i, *supra*), and specific requirements for personal loan contracts under the Notification on Lending Business.

Specific requirements for personal loan contracts include, for example, requirements that the contract must be in the Thai language, clearly visible and legible, and that characters be of a size not smaller than two millimetres. The content of the contracts must also contain certain significant information and conditions (for example, where the contracts impose a fine or fee on consumers for prepayment of a debt, such contracts must clearly state the rate

6 Notification of the BOT No. SorNorSor. 01/2551.

7 Notifications of the BOT Nos. SorNorSor. 73/2551 and SorNorSor. 83/2551, and Notification of the BOT Prescribing Rules, Procedures, and Conditions for the Operation of Controlled Personal Loan Business by Non-Financial Institutions, dated 20 July 2006.

of the fine or fee as well as the amount on which such fine or fee will be calculated), and must not contain any prohibited conditions (such as terms permitting the financial institution to terminate the contract without notifying the consumer in writing).

ii Recent developments

The introduction of the DCA provides the long-awaited protection for consumers with instalment credit in relation to debt collection, and this is discussed in Section V.ii, *supra*.

VII OTHER AREAS

i Amendments to the guarantee and mortgage laws

Provisions concerning guarantees and mortgages under the CCC have been amended for the benefit of guarantors and mortgagors according to the Civil and Commercial Code Amendment Act (No. 20) of 2014, and the Civil and Commercial Code Amendment Act (No. 21) of 2015 (collectively, 'the Amended Law'). The main objective behind the Amended Law is to provide better protection to guarantors and mortgagors, such as to ensure that they are afforded fair treatment by creditors. The protection is available for guarantors or mortgagors who are not the debtors themselves, but enter into the guarantee or mortgage agreements to secure the debts of the debtors.

Under the Amended Law, guarantees and mortgages can be given only for a valid debt. Where a guarantee or mortgage is granted for a debt that will be financed in the future, the relevant agreement must indicate the objective of the debt, the nature of the debt, the limitation of guaranteed amount, and the debt financing period. In addition, the Amended Law requires the consent of the guarantors or the mortgagors, as the case may be, to any extension of the debt repayment period granted by creditors to debtors (in other words, consent granted in advance in the agreement will not be enforceable).

Other significant changes concerning guarantees are (1) provisions prohibiting individual guarantors (but not juristic persons) from being liable in the same manner as joint debtors, or in the capacity of joint debtors; and (2) the provision requiring creditors to notify guarantors in writing of a debtor's default within 60 days from such default, and prohibiting creditors from demanding payment of the debt during such period.

With regard to mortgages, similarly, individual mortgagors (but not juristic persons) must not be liable for any debts exceeding the price of the mortgaged property, and any agreements specified otherwise will be void. Further, in cases where the creditor wishes to enforce the mortgage, it must send a written notice to the debtor (not less than 60 days in advance) demanding the debt repayment, and another written notice to the mortgagor (within 15 days from the notice to the debtor) of its intention to enforce the mortgage.

VIII UNFAIR PRACTICES

In recent years, unfair practices most widely discussed and reported to relevant authorities would likely be inappropriate, abusive and deceptive practices of debt collection. Such issues, however, are expected to be reduced after the enactment of the DCA (as discussed in Section V.ii, *supra*).

IX RECENT CASES

i Enforcement actions

The BOT recently received a complaint from a group of consumers alleging that their personal information, such as national identification numbers and telephone numbers, were sold by commercial banks' officers to third parties without their consent. This resulted in unanticipated contact from third parties offering products and services to them (e.g., insurance and financial services). The Thai Bankers Association has clarified that no such information had been distributed by the commercial banks as claimed. The issue is currently being investigated by the BOT on an urgent basis.

ii Disputes before the regulator

Based on the records and reports of the FCC published on its official website, major complaints raised by consumers in 2016 involve issues regarding operational issues for service providers, for example, delays in processing, failure to provide sufficient information on services, charging of high fees and cross-selling of products. Financial services that were the subject of the most complaints are credit cards and personal loans.⁸

Cross-selling is an issue of utmost concern given the gradual increase in the number of the complaints. For example, when customers were requested to change their ATM or debit cards from magnetic-strip cards to chip cards recently, certain service providers refused to issue the standard cards claiming that such cards were out of stock, and issued other types of cards bundled with other products such as life insurance. The BOT has circulated a letter to all branches of commercial banks directing that sufficient amounts of standard chip cards without any bundled products or services must be available to consumers at all times.⁹ Consumers who encounter the chip card issuance issue have the right to inform the FCC to investigate the matter and take appropriate action accordingly.

iii Litigation

According to the information revealed by the Office of the Judiciary, based on the number of the consumer cases filed with the courts in Thailand in 2015, the most common claims relate to personal loans, credit cards, and car and motorcycle leasing and hire purchases.

Notably, the Supreme Court held in a decision that a supplementary credit card holder must be jointly and severally liable with the holder of the main credit card given that this was clearly provided for in the credit card agreement signed by both cardholders.¹⁰ This departs from a previous decision of the Supreme Court in 1999 in which the holder of the supplementary card was not found liable as a joint debtor, since the application form for the supplementary card did not make provision for such liability.¹¹ In view of this, the determining factor would appear to be the content of relevant agreements, specifically whether or not the liability of the supplementary cardholder is clearly stated, and whether

8 Detailed statistics can be found at www.1213.or.th (information available in Thai only).

9 Letter of the BOT No. ThorPorTor.PhorTor1.(51) Vor. 1310/2559, dated 3 October 2016.

10 Supreme Court Decision No. 21063/2556.

11 Supreme Court Decision No. 1297/2542.

or not the supplementary card holder had signed such documents. Application forms for a supplementary credit card are normally short and do not contain as many terms and conditions as the application for the main card holder.

X OUTLOOK

The National e-Payment Master Plan will continue to be one of the main projects prioritised by the Thai government for the foreseeable future. Apart from the launch of PromptPay under phase 1 of the Plan, there are other phases being concurrently implemented or planned for implementation in the near future. These include the card acceptance expansion project under phase 2, the adoption of an e-tax system under phase 3, the adoption of a government e-social welfare system under phase 4, and a project to educate the public on the e-payment system under phase 5. Consumer protection remains a significant issue of concern when implementing the National e-Payment Master Plan. Therefore, it is likely that additional specific laws or BOT announcements will be issued for the purpose of ensuring the security of transactions and governing the operations of service providers and other relevant sectors, especially as the Plan involves new technology.

Appendix 1

ABOUT THE AUTHORS

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R&T Asia (Thailand) Limited

Sui Lin is a partner of R&T Asia (Thailand) Limited (a member firm of the Rajah & Tann Asia network). She was a founding member of the Bangkok office, and its former managing partner. She graduated with a Bachelor of Laws from the University of London, and is a qualified solicitor in England and Wales. Sui Lin has more than 22 years of experience in Thailand, acting for a broad range of corporate and financial clients, and advising on general corporate and commercial, consumer protection, insurance, and employment matters in Thailand. She straddles the Thai/international business communities effectively as a result of her bilingual skills and her training in England. She also possesses the unique ability to communicate Thai law advice in a way that is accessible and comprehensible to international clients.

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Saraj Jongsaritwang is a partner of R&T Asia (Thailand) Limited. He was a founding member of the Bangkok office. Saroj has more than 17 years of experience in legal field in Thailand, acting for a broad range of corporate and financial clients, acting as a legal counsel for a group of companies (consisting of 10 companies) representing the largest consumer finance business (including credit card and personal loans) in Thailand including advising various commercial banks in various banking and project finance matters. Saroj is recognised as a recommended lawyer in *The Legal 500* (2016 edition) in banking and finance and technologies, and media and telecommunications.

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