

Protection for Financial Services Clients of Thai Financial Institutions

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Abstract

Provision with financial consumer protection is an issue, to which precedence is given by the regulatory agencies and financial business operators, especially in the business sector of financial institutions where protection for financial services clients is provided by several laws, for example: law on financial institutions; law on credit information business; law on payment system; and law on consumer protection, etc., empowering the Bank of Thailand to stipulate regulations for the financial institutions to comply with, but from rapid development of technologies nowadays, emerge many new forms of products and services, probably complicating and resulting in unfairness to the consumers, who lack proper knowledge of the products and services. Therefore, the business operators are required to strictly comply with rules of fair administration of services to the clients (Market Conduct), stipulated by the Bank of Thailand, and build systematic cooperation with the regulatory agencies, in order to provide with protection for financial services clients and bring about confidence in the sector of financial institutions.

Keywords: Protection, Financial Services Clients, Financial Institutions

Nature of Problems with Current Financial Consumer Protection

As technologies are rapidly advancing and ever changing, financial products and services are becoming more diverse and complicated, putting the consumers at risk of damage, which may results from use of the financial services. For this reason, the Bank of Thailand sees the importance of protection for rights of financial services clients, in order that the consumers will receive fair services and promote skills at, and knowledge and understanding of financial products, for that the consumers will understand rights and obligations of the financial services clients, be able to formulate their own financial plans, and know how to build financial disciplines. Therefore, the Financial Consumer Protection Center was set up on the 13th of January 2012, to carry out important duties of answering inquiries and admitting complaints in relation to use of financial services of the financial institutions and other financial service providers, who are regulated and monitored by the Bank of Thailand, in order to solve problems, coordinate and follow up the solutions, as well as services with respect to banknotes, bonds and regulations on foreign currency financial transactions. Apart from this, it performs duties of

relaying information of problems, complaints and suggestions to relevant agencies, in order to be used as information supporting formulation of policies on monitoring and regulating the financial institutions, as to operate in proper and fair manners, and take into account of the 4 basic rights of financial services clients, as follows: (The Financial Consumer Protection Center, The Bank of Thailand, 2018)

1. Right to Be Informed: In using services of the financial institutions, receiving information sufficient for making decisions is necessary, and officials of the financial institutions must correctly and completely explain the terms and conditions to the clients, without distorting any facts, for example, differences between money deposit services and insurance and securities products, money deposit and bills of exchange, benefits and risks, which may result from choosing particular types of products, contractual rights and obligations, as well as use sales promotion media, which must not be excessively convincing or mislead the clients. Apart from this, there is important information necessary for supporting decisions to choose particular types of services, namely interest rates, discounts, fees, as well as penalties, which may arise as a result of not complying with the terms and conditions, whereby the clients can inquire about or find additional information at the financial institutions through various channels, for example: inquiring the staff; looking at announcements posted at the headquarters and branch offices, and websites of the financial institutions. But if clients want comparison of information of different banks or companies under regulation of the Bank of Thailand, it can be found in the website of the Bank of Thailand;

2. Right to Choose: As a money owner, who will directly enjoy benefits or suffer damages, a client should choose to only use a financial service, which it genuinely needs. Importantly, the client must remember must not forget its freedom to choose any services, such as choose to apply for an ATM card, a debit card, or not to apply for any card at all, when it opens a deposit account at a bank, that it does not need to purchase any life insurance, which is brokered by the financial institution, and does not need to deposit a large sum of money, if it wants to rent a safety vault, etc.;

3. Right to Be Heard: If a client finds that a financial institution treats it improperly or unfairly, such as provides with incomplete information, forces to purchase a financial product, deducts an amount from a deposit account without the client's consent, the client should immediately alert an agency of the financial institution, who admits complaints, in order to help solving the problem, whereby the financial institution must furnish proof that it has admitted the client's complaint, and communicate a result of the process in a timely manner;

4. Right to Redress: If a client suffer damage from use of a service of a financial institution, for example, the system failing to deduct an amount from a deposit account to clear a credit card debt, resulting in an outstanding debt amount, an ATM failing to pay out cash but debiting the amount from the account, a banking official stealing an amount from an account, and other financial transactions, when facts are proven or verified, it turns out to be a fault of the financial institution or its official, either intentionally or negligently inflicting damage on the client, the client is entitled to compensation for the damage, and the financial institution must notify the client about a result and progress of the process of compensation for the damage. However, if the damage results from the client's fault, such as transferring fund via ATM to a wrong account or in a wrong amount, etc., the financial institution is not required to compensate the damage.

Nature of the problems with financial consumer protection can be contemplated in the report on performance of the Financial Consumer Protection Center, the Bank of Thailand, in administering information and advices, and admitting complaints in the first half of 2018, during

the 1st of January - the 30th of June 2018 (The Financial Consumer Protection Center, The Bank of Thailand, 2018). It is found that people contacted the center through various channels in 12,471 cases, and complaints about financial services of the financial institutions can be categorized as follows:

Credit Aspect: In the first half of 2018, there were 449 cases of complaints, increasing by 164 cases (57.5 percent) from the latter half of 2017, whereby the top 3 most frequent complaints comprise of:

1) Credit Cards The majority of the complaints concerned refusal to payments of prices of goods or services to shops, from which the clients did not purchase the goods or receive the services, or received the services but the services were not in accordance with the agreements, failure to enjoy rights under promotion programs, apart from these, there were cases of notification of cancellation of credit cards, with which were not proceeded by the financial institutions, and which were still subject to fee collection or debt recovery, etc.;

2) Leasing the majority of the complaints concerned incorrect principal amounts/debt amounts, fees/interests, which were found by the clients to be miscalculated or unfair, such as debt recovery fees, delay in recovery of debts or penalties, the bank officials furnishing with incomplete/incorrect information, etc. Apart from these, the clients did not understand sequences of debt clearance, resulting in outstanding debt amounts, because the debts were cleared later than the fees;

3) Personal Credit The majority of the complaints concerned miscalculation of interests or fees, officials failing to or delaying their performance, such as delay in consideration for debt restructuring, delay in issuance of debt repayment certificates, delay in account status verification, the officials delaying their performance, such as applications for services, including negotiation for amendment to contracts (terms of installments/interest), as errors or discrepancies in agreements were found, objections or inquiries transactions of credit cards/cash advance cards, delay in approval for credit amounts/refinance, delay in cancellation or closure of credit cards, as well as follow up of complaints, provided that there were observations in relation to unfair services, such as application for credit cards, where the banks approved other types of credit cards, but did not apply for or send the said cards to the clients. These were found to be forcing the clients to hold credit card products, for which the clients did not apply, matters, about which the Bank of Thailand communicated directives for properly administering services to the clients, such as approval for products upon the clients' consent, or entitling the clients to choose insurance companies under the rules of the regulatory agency, etc.;

Complaints with Respect to Deposits and Bills of Exchange: In the first half of 2018, there were 219 cases of complaints, increasing by 58 cases (36.0 percent) from the latter half of 2017, whereby the top 3 most frequent complaints comprise of:

1) Problems with Deposit/Withdrawal/Transfer The majority of the complaints concerned problems with conduct of transactions through automated machines, such as missing amounts in fund deposits, funds failing to reach recipients' accounts, as well as failing to receive cash or receiving missing cash amounts from fund withdrawals. Apart from these, found were problems with conduct of transactions by officials and conduct of transactions through channels of e-banking;

2) Officials Failing to or Delaying Their Performance For example, delay in changing to new numbers from original contact telephone numbers, which used True wallet and transfer of funds in the wallet, delay in receiving account statements, delay in cancellation of ATM cards, delay in

proceeding with cases of failure to pay out cash from ATMs, delay in return of cheques, delay in investigation in cases of identity theft for opening accounts;

3) Cash Withdrawals by Other Persons The majority of the complaints concerned cases of cash withdrawals where the clients did not conduct the transactions, falsification of financial or fund transfer documents, as well as cases where officials of financial institutions corrupted, whereby noteworthy cases were that many people were deceived by call-center fraud gangs into giving up their personal information and then the gangs used their personal information to apply for internet banking services, as well as deceived into giving up their OTP passwords for withdrawing funds from their accounts.

Apart from these, there were cases where officials furnished incomplete or incorrect information, such as sale of insurance by telling clients that the products were savings, making the clients understand that the products were fund deposits, or furnished incomplete information in application for new debit cards.

Complaints about Cross-Selling: In the first half of 2018, there were 17 cases of complaints, increasing by 8 cases (32 percent) from the latter half of 2017, whereby the most frequent complaints were forced sale of insurance or other products upon application for credit, the second most frequent complaints, forced sale of insurance or other products upon application for deposit accounts. The majority were offers of sale of products without furnishing complete or correct information, such as misrepresenting sale of insurance as high-yield deposit plans, cross-selling credit with insurance, cross-selling insurance with other products, for example, forced sale of insurance upon application for rent of safety vaults.

Complaints about Behaviors of Financial Institutions' Officials (including Outsourced Officials): In the first half of 2018, there were 50 cases of complaints, increasing by 25 cases (100.0 percent) from the latter half of 2017, whereby the majority of the complaints concerned improper debt recovery behaviors, ranging from intimidating clients and disturbing clients by repeated telephone calls, the second most frequent complaints concerned financial institutions' management or officials committing corruption or fraud.

Law Relating to Protection for Financial Services Clients

Protection for financial services clients of the sector of Thai financial institutions is pursuant to Financial Institutions Businesses Act, B.E. 2551, Section 39, providing: "For the purposes of protecting consumers, the Bank of Thailand shall have the power to issue notifications requiring compliance by financial institutions of any type in the following matters:

1) acceptance of deposits of money, acceptance of money from the public, borrowing of money, investment, granting of credits, undertaking of contingent liabilities, and undertaking of other businesses that may be carried on by the financial institution;

2) execution of a juristic act or contract with a member of the public, consumer or retail customer in the course of undertaking of business of the financial institution, which involves an amount or value as prescribed by the Bank of Thailand, whether with regard to the substance, benefit calculation method, or contract form;

3) execution of a personal guarantee contract which shall specify the principal amount limit or shall not require the guarantor to give an unlimited guarantee.

In case of guarantee of a debt with a definite period for repayment and the financial institution grants an extension of time to the primary debtor but they are unable to settle within six months, the financial institution shall inform the guarantor accordingly;

4) actions that must be taken if a juristic act or contract made allows the financial institution to unilaterally amend the contract;

5) disclosure of information relating to the financial institution.

Apart from these, under Section 40 financial institutions are required to inform the public about details of calculation of annual rate of service charges, while the Bank of Thailand is empowered to prescribe the method of calculation of the annual rate of service charges for a financial institution to comply with, which is deemed to be an additional measure for regulating business operation of the financial institutions, as to be fair and transparent in treatment for financial services clients, and if a financial institution violate or fail to comply with the measure, it will be subject to a fine of not more than Five Hundred Thousand Baht and a further fine of not more than Five Hundred Thousand Baht per day throughout the continuation of such violation or until rectification has been made (Section 125).

Under the provisions above, the Bank of Thailand therefore issued Notification of the Bank of Thailand No. SorKorSor. 1/2561, Regarding Management of Fair Customer Service (Market conduct), having become into force since the 31st of January 2018, for the purpose of encouraging financial service providers to administering services to clients in responsible and fair manners, aiming to: (1) build customers' confidence that the service providers focus on administering services in fair, sincere and non-exploitative manners; (2) get customers proper and clear advices; (3) provide for customers with fair products and services in senses of prices and conditions; (4) enable customers to conveniently use services and enjoy proper solutions to problems; and (5) have the service providers help customers in understanding their rights and obligations. The details appear in the subsequent topic.

Rules of Fair Administration of Services to Clients (Market Conduct) of Thai Financial Institutions

Under Bank of Thailand Notification No. SVG. 1/2561 Re: Regulations on Market Conduct is an integral part to encouraging the service providers to be able to operate business in sustainable manners, administer proper and fair services, in order to protect consumers, for public safety and order, and for the regulating purpose. Therefore, development is needed with respect to: (1) robust regulation, which covers stipulation of rules focusing on elevating administration of the service providers, in order to definitely improve quality of the service administration in the long run, which is practical and not too burdensome, in holistic manners, without dispersing rules in several notifications, and empower to institute legal proceedings, as well as follow up by enforcing the rule in effective and transparent manners, efficiently cooperating with other agencies; (2) encouragement for the service providers to be aware of and give precedence to administration of the services to customers in fair manners, as factors which significantly help the service providers' revenue constantly growing; and (3) encouragement for the service providers to furnish information relating to quality of products and services, as to enable customers to fairly choose the products or services, which match their desire, and to have channels for solutions to problems.

To elevate management under this Notification, rules and minimum standards, as well as samples of behaviors as practical guidelines, are prescribed for service providers, ranging from commercial banks, finance companies, credit foncier companies, companies within the financial business group, to service providers, who operate business of credit cards and nano finances under supervision, covering operating systems relating to service administration to customers from the beginning to the end (end-to-end process), in all 9 systems, comprising of: (1)

Corporate culture and roles and responsibilities of board of directors and senior management; (2) Product development and client segmentation; (3) Remuneration scheme; (4) Sales process; (5) Communication and training; (6) Data privacy; (7) Problem and complaint handling; (8) Control, management and audit (3 Lines of defense); and (9) Operation and business continuity.

Apart from these, the Notification requires disclosure of information about quality of products and services, in order that customers are well informed and able to choose suitable products and services. And in a case where a service provider significantly fails to satisfy a minimum standard, the Bank of Thailand is empowered to stipulate additional conditions for the service provider to comply with, in order to mitigate impact on the customers in general, provided that this Notification prescribe most of the rules to be consistent with Rule of the Office of the Securities and Exchange Commission Regarding Sale and Service Provision Relating to Products in Capital Market, Which Are Investment Units and Debt Instruments, in order to reduce burdens of the service providers, thereby enabling them to comply with the rules in consistent manners for all products.

Whereby this Notification is to apply to:

- 1) All financial institutions under Financial Institutions Businesses Act., B.E. 2551 (2008), and the Amendment thereto;
 - 2) Companies within the financial business group under Notification of the Bank of Thailand Regarding Rule of Consolidated Supervision, and all the affiliated companies, excluding nano finance businesses under supervision, electronic payment service businesses (e-Payment), asset management companies and companies operating businesses under supervision of other regulatory agencies, such as securities companies, asset management companies, non-life insurance companies, life insurance companies;
 - 3) Credit card business operators, who are not financial institutions, under Notification of Ministry of Finance Regarding Business Regarding Business, for which permission must be obtained according to Article 5 of Notification of the Revolution Council No. 58, dated 11th of November 2002, and the Amendment thereto, and who are not companies within the financial business group under Notification of the Bank of Thailand Regarding Rule of Consolidated Supervision, and all the affiliated companies;
 - 4) Nano finance businesses under supervision, who are not financial institutions, under Notification of Ministry of Finance Regarding Business Regarding Business, for which permission must be obtained according to Article 5 of Notification of the Revolution Council No. 58 (Subject: Nano Finance under Supervision), dated 9th of June 2005, and the Amendment thereto, and who are not companies within the financial business group under Notification of the Bank of Thailand Regarding Rule of Consolidated Supervision, and all the affiliated companies.
- Essence of financial service providers' protection appears under Article 5.3.1, regarding rules concerning management of operating systems relating to administration of services to customers, in the 9 systems, including cases where service providers assign responsibilities for some parts of the operations to third-party service providers (outsourcing) agents of the service providers, as if the service providers administer the services on their own, with respect to: system work management, administration of services to individual or small business customers, who potentially get unfair services. The service providers must administer the services in compliance with the rules concerning management to satisfy the minimum standards of the 9 systems, whose substantial matters and expected results can be summarized as follows:

- 1) Corporate culture and roles and responsibilities of board of directors and senior management - board of directors and senior management of service providers are responsible for driving

administration of fair services in practical and effective manners, in order that the fair services are the heart of the corporate culture;

2) Product development and client segmentation - service providers have products corresponding with wishes and financial capacity, and ability to understand of customers in each target groups, and suitable for sales capability of the officials and the operating systems, as well as capability of quality control and fair sale to the customers, in order that the customers will enjoy fair services in senses of prices and conditions;

3) Remuneration scheme - service providers set remunerations and penalty measures, which take into account of quality of service administration, in significant manners for all levels of officials relating to the service administration to customers, as well as executives, who are responsible for supervision, in order to bring about fair service administration;

4) Sales process - customers are offered sale, which does not disturb their privacy, furnished with complete and accurate information, which is not surreal or distorted, but sufficient for making comprehensible decision and suitable for subsequently using the services, enjoy the products and services, which correspond with wishes and financial capacity, and ability to understand;

5) Communication and training - officials of all levels relating to service administration to customers receive communication, which helps in realizing the importance of fair service administration, having knowledge and capacity adequate for performing their duties, as to practically administer fair service;

6) Data privacy - customers' data are safely maintained, taking account of their privacy and confidentiality. Forwarding the customers' data to a third party must not affect the customers' privacy;

7) Problem and complaint handling - service providers' solutions to problems, management of complaints and compensations are definite, expeditious, efficient and fair;

8) Control, management and audit (3 Lines of defense) - processes relating to administration to customers must be controlled, managed and audited, taking into account of fair and comprehensive services, detecting risks and anomalies, in order to efficiently prevent damage from arising;

9) Operation and business continuity - management relating to service administration to customers avail operating systems, risk management and business continuity plans, in normal cases and emergency cases, which can assure that orders or wishes of the customers are precisely and completely satisfied in timely manners, and the customers constantly enjoy fair services.

For other groups of customers, such as medium-scale or large-scale businesses, service providers must apply these rules to possibilities that particular groups of customers may receive unfair services, which may vary amount the groups and products, thereby formulating internal policies and procedures, as well as requiring implementation and constantly reviewing its suitability.

Analytical Issues and Recommendations

Presently, enforcement of the law by the Bank of Thailand has settled 2 cases of breach of rules of fair administration of services to the clients (Market Conduct), under Settlement Order No. 3/2561, in the case where Financial Institution 1, as a non-life insurance brokerage business operator, failed to comply with the rules of business operation as stipulated by the Bank of Thailand, that is to say - forcing customers to purchase fire insurance policies as guarantees for housing credit from particular insurance companies, whereby the customers were not entitled to voluntarily choose any other insurance companies, the behavior which violated the Notification of the Bank of Thailand No. SorNorSor. 17/2551, dated the 3rd of August 2008, violating Section

36, subject to the punishment under Section 128, of Financial Institutions Businesses Act., B.E. 2551 (2008), imposing the fine in the amount of 3,210,000 Baht, provided that, after the investigation yielded the result, the financial institution improved the processes relating to sale and administration of services, and in the case where Financial Institution 2, as a non-life insurance brokerage business operator, failed to comply with the rules of business operation as stipulated by the Bank of Thailand, that is to say - forcing customers to purchase fire insurance policies as guarantees for housing credit from particular insurance companies, whereby the customers were not entitled to voluntarily choose any other insurance companies, the behavior which violated the Notification of the Bank of Thailand No. SorNorSor. 17/2551, dated the 3rd of August 2008, violating Section 36, subject to the punishment under Section 128, of Financial Institutions Businesses Act., B.E. 2551 (2008), imposing the fine in the amount of 3,540,000 Baht, provided that, after the investigation yielded the result, the financial institution improved the processes relating to sale and administration of services. It can be found that the cases were settled by high amounts of fines, and information of the fines was disclosed, whereby rules under the Notification require service providers to disclose information of the case settlement and denunciations, which is a measure efficiently affecting service provision of the financial institutions, to be implemented for the benefit of consumer protection, and safety and happiness of people using the financial services.

However, given the complaints under the report of the Bank of Thailand, with respect to protection for the financial services clients, it can be seen that the majority are complaints concerning unfair or inappropriate conducts of the financial business operators, ranging from requiring fees of incorrect types or excessive amounts, responding clients' requests with delay, requiring clients to purchase other financial products or services, as well as demanding debt repayment in inappropriate manners, and it is noted that the financial services providers, who are financial institutions, usually offer various products in relation to regulatory agencies other than the Bank of Thailand, for example: insurance products under regulation of Office of Insurance Commission (OIC); credit products under regulation of Ministry of Finance; securities products under regulation of the Securities and Exchange Commission (SEC.), and there are other regulatory agencies, including: Thailand Securities Institute (TSI.); National Credit Bureau Co., Ltd.; Office of the Consumer Protection Board (OCPB.); and Department of Special Investigation (DSI). And under Bank of Thailand Notification No. SVG. 1/2561 Re: Regulations on Market Conduct, exemption is provided, as that the regulatory criteria under this Notification do not apply to nano finance business under supervision, e-payment, asset management companies and companies operating specific business under supervision of other regulatory agencies, such as securities companies, mutual fund management securities companies, non-life insurance companies, life insurance companies. Therefore, the issues of cooperation and coordination among relevant regulatory agencies are important matters, to which this Article focus on recommending suitable approaches, whereby the Author recommends an approach to integrating cooperation between the competent agencies, proposing forms of systematic cooperation, being conclusion of a memorandum of agreement on cooperation among all the competent agencies, in order to administer provision of services and consumer protection, for the objectives of coordinating the cooperation in inspecting and regulating the business operators, protecting the consumers' rights to judicial proceedings, providing channels for submitting complaints, assisting consumers, who are affected by or suffer from unfair or inappropriate conducts, connecting and exchanging information in relation to provision of the financial services, promoting financial knowledge, providing with cooperation and support of the agencies

in the public sector, establishing a task force on performance of duties in enforcing the law, as well as coordinating institution of denunciation and prosecution against offenders, aiming to serve the public as consumers as to more practically enjoy protection under the law.

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