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THAILAND

Newsletter

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Hire Purchase and Leasing Business Regulatory Outlook

Vehicle hire purchase and the leasing business have provided consumers with the opportunity to afford cars and motorbikes previously thought unattainable. Given the popularity and effects on the consumers in Thailand market, these businesses have been a controlled contract business in which the terms and conditions of a hire purchase agreement must comply with the requirements under the relevant laws since 2012. However, there have been no other key regulations governing these businesses. We will discuss the new requirements on hire purchase agreements from the Office of the Consumer Protection Board and the Bank of Thailand's plan to regulate hire purchase and leasing of vehicles businesses.

1. *New Requirements of Hire Purchase Agreements (effective on 10 January 2023)*

On 12 October 2022, the Contracts Committee (a committee under the Office of the Consumer Protection) enacted a new 2022 notification (the "**2022 Notification**"), replacing its 2018 version, which will become effective on 10 January 2023. These notifications apply to B2C (Business-to-Consumer) hire purchase businesses, but do not include B2B (Business-to-Business), or any car or motorcycle leasing businesses. Any vehicle hire purchase agreement made prior to the effectiveness of the 2022 Notification will continue to be effective and subject to the 2018 Contracts Committee's notification.

Generally, the 2022 Notification provides better protection for a hire purchaser. The following are notable points under the 2022 Notification compared to its 2018 version:

Items	2018 Notification	2022 Notification								
1. Interest Rate	Flat interest rate, provided that the effective interest rate must be specified in the agreement.	Flat interest rate, provided that the effective interest rate must be specified in the agreement. Unless any specific law specifies otherwise, the effective interest rate must be calculated from market rates, but not exceeding the following rates:								
		<table><tr><th>Type of vehicle</th><th>Percentage per year</th></tr><tr><td>New cars</td><td>10%</td></tr><tr><td>Used cars</td><td>15%</td></tr><tr><td>Motorcycles</td><td>23%</td></tr></table>	Type of vehicle	Percentage per year	New cars	10%	Used cars	15%	Motorcycles	23%
		Type of vehicle	Percentage per year							
		New cars	10%							
		Used cars	15%							
Motorcycles	23%									
The maximum interest rate may be readjusted every 3 years.										
2. Default interest	Not exceeding effective rate <i>plus</i> 3% per year with a maximum of 15% per year.	Not exceeding 5% per year <u>calculated from the default amount</u> . Remark: The 2018 Notification does not specify what amount the default interest must be calculated from. Consequently, hire vendors often calculate the default interest from the total outstanding amount which may not be fair for consumers. As such, the 2022 Notification clearly specifies that default interest must be calculated from the default amount to address this issue.								
3. Prepayment discount for one-time payment to close the hire purchase agreements	The hire vendor must offer a discount of no less than 50% of the undue interest.	The hire vendor must offer the following discounts at a minimum based on the following rates.								
		<table><tr><th>Total contract amount paid</th><th>Minimum discount</th></tr><tr><td>Not exceeding 1/3</td><td>60% of the undue interest</td></tr><tr><td>At least 1/3 but not exceeding 2/3</td><td>70% of the undue interest</td></tr><tr><td>More than 2/3</td><td>100% of the undue interest</td></tr></table>	Total contract amount paid	Minimum discount	Not exceeding 1/3	60% of the undue interest	At least 1/3 but not exceeding 2/3	70% of the undue interest	More than 2/3	100% of the undue interest
		Total contract amount paid	Minimum discount							
		Not exceeding 1/3	60% of the undue interest							
		At least 1/3 but not exceeding 2/3	70% of the undue interest							
More than 2/3	100% of the undue interest									
Remark: Under the Notification, exactly 1/3 appears to fall in both the first and the second items above. Further clarification by the Contract Committee is required.										

Items	2018 Notification	2022 Notification
4. Enforcement upon default	<p>a. <u>Hire vendor's rights to terminate the agreement</u></p> <p>If the hire purchaser defaults on three consecutive instalments, the hire vendor shall notify the hire purchaser in writing at least 30 days from the receipt date to make the said outstanding payment. If the hire purchaser fails to pay the unpaid amount, the hire vendor will be entitled to terminate the hire purchase agreement and sell the vehicles through the bidding process or public auction.</p>	<p>a. <u>Hire vendor's rights to terminate the agreement</u></p> <p>Same as the 2018 Notification.</p>
	<p>b. <u>Hire purchaser's right to purchase the vehicles</u></p> <p>The hire vendor must notify and provide the hire purchaser at least seven days to purchase the vehicle before auctioning them. If the hire purchaser does not exercise the said right, the hire vendor shall notify and provide the guarantor at least 15 days to purchase the vehicles.</p>	<p>b. <u>Hire purchaser's right to purchase the vehicles</u></p> <p>The hire vendor shall notify and provide the hire purchaser and the guarantor (if any) at least 30 days before auctioning the vehicle in order to allow the hire purchaser to purchase the vehicle within 20 days.</p> <p>The hire purchaser must be entitled to the discount explained above.</p> <p>The guarantor shall have the same right to purchase the vehicle if the hire purchaser does not purchase them.</p> <p>The guarantor and the hire purchaser can transfer the right to purchase to a third party.</p>
5. Bidding and public auction process	<p>The hire vendor must notify the hire purchaser and, if any, guarantor at least seven days before the bidding or public auction.</p> <p>The notification must include name of bidding/auctioning operator, date, and place of the bidding/auctioning.</p>	<p>The hire vendor must notify the hire purchaser and, if any, guarantor at least 15 days before the bidding or public auction.</p> <p>The notification must include name of bidding/auctioning operator, date, and place of the bidding/auctioning.</p> <p>In addition, for the first bidding/auctioning, the hire vendor must also notify the bidding/auctioning price, and such price may not be decreased unless the hire purchaser and the guarantor are notified prior in writing.</p>

Items	2018 Notification	2022 Notification
6. Payment after bidding and public auction process	<p>In the event that the hire vendor sells the vehicles via bidding or public auction, if the price exceeds the outstanding debt, the hire vendor must return the excess amount to the hire purchaser.</p> <p>However, if the price is less than the outstanding debt, the hire purchaser is responsible for all the remaining debt.</p>	<p>In the event that the hire vendor sells the vehicles via bidding or public auction, if the price exceeds the outstanding debt, the hire vendor must return the excess amount to the hire purchaser.</p> <p>However, if the price is less than the outstanding debt, the hire purchaser is responsible for all remaining debt excluding the undue hire-purchase interest.</p>
7. Interest charge upon termination	N/A	The hire vendor must not charge interest which is part of undue hire-purchase payments after the termination of the contract.

Relevant operators are required to update their template hire purchase agreements by the effective date of the 2022 Notification.

BOT's Plans to Regulate Car and Motorcycle Leasing and Hire Purchasing Businesses

The Bank of Thailand (the "BOT") and the Fiscal Policy Office have prepared a draft Royal Decree which will regulate car and motorcycle leasing and hire purchasing businesses (the "Draft Royal Decree"). The Draft Royal Decree, if enacted as is, would subject non-bank hire purchase and leasing companies (which are not regulated by any specific regulators except for the Office of the Consumer Protection as discussed above) to the supervision of the BOT.

The Draft Royal Decree has already undergone a public hearing and is in the legislative process. According to wording in the Draft Royal Decree, car and motorcycle leasing and hire purchasing businesses will be subject to the Financial Institutions Businesses Act, B.E. 2551 (2008).

In this regard, the key concepts under the Draft Royal Decree are the duties of business operators to disclose the details of interest rates, discount rates, and other service fees publicly at their place of business and to report them to the BOT, including to empower the BOT to set forth further requirements (e.g., contractual terms and form of agreements in certain cases, limitations on the liabilities of guarantors, disclosure of information, calculation of annual service fees, chargeable interest rate, discount, fees, deposit, and default interest, and security).

In light of the above, if the Draft Royal Decree is enacted, there may be further regulatory changes to the car and motorcycle leasing and hire purchasing business depending on the further details of the regulation the BOT will enact.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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