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Fri Sep 13 13:20:07 2019

Citations:

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Cynthia M. Pornavalai, Thai Asset Management Corporation - Objectives and Powers, 30 Int'l Bus. Law. 174 (2002).

APA 6th ed.

Pornavalai, C. M. (2002). Thai asset management corporation objectives and powers. International Business Lawyer, 30(4), 174-185.

ALWD

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Cynthia M. Pornavalai, "Thai Asset Management Corporation - Objectives and Powers," International Business Lawyer 30, no. 4 (April 2002): 174-185

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Cynthia M Pornavalai, "Thai Asset Management Corporation - Objectives and Powers" (2002) 30:4 Intl Bus Lawyer 174.

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Pornavalai, Cynthia M. "Thai Asset Management Corporation - Objectives and Powers." International Business Lawyer, vol. 30, no. 4, April 2002, p. 174-185. HeinOnline.

OSCOLA 4th ed.

Cynthia M Pornavalai, 'Thai Asset Management Corporation - Objectives and Powers' (2002) 30 Int'l Bus Law 174

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Thai Asset Management Corporation

Objectives and Powers



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Declared as Thailand's last chance to clean up its non-performing loans mess, the Emergency Decree on the Thai Asset Management Corporation came into force on 9 June 2001. This article examines the objectives and powers of the Corporation and assesses its performance to date.

The Thai Asset Management Corporation (TAMC) was established in order for the Government to address the high level of non-performing loans (NPLs) in both state-controlled and private financial institutions and to set the environment right for the banks to recommence lending. The TAMC is a government agency owned 100 per cent by the Financial Institutions Development Fund (FIDF). The TAMC is managed by a board of directors consisting of no more than 11 members appointed by the Minister of Finance and approved by the Council of Ministers.

Objectives and powers

Basically, the TAMC is tasked with the acceptance of transfer of sub-quality assets and their management. Towards the realisation of its objectives, the TAMC has been granted unprecedented powers, such as the ability to establish limited companies, to guarantee credit for debtors and to lend money to debtors. It will fund its purchase of NPL assets from financial institutions by issuing 170 billion baht (approximately US\$3.7 billion) ten-year notes guaranteed by the FIDF to such financial institutions.

Mechanics

Transfer of assets

NPLs that can be transferred

All state-owned financial institutions and asset management companies are required to transfer all

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NPLs falling under the following categories as at 31 December 2000:

- 'loss' (required to be written off);
- 'doubtful of loss' (requiring 100 per cent provisioning);
- 'doubtful' (requiring 50 per cent provisioning); and
- 'sub-standard' (requiring 20 per cent provisioning).

Private financial institutions and asset management companies may transfer NPLs to the TAMC only under the following circumstances:

- the NPLs are secured by property;
- the debtor, which is a juristic entity, is indebted to at least two Thai financial institutions;
- the total value of NPLs owed by a debtor is at least 5 million baht; and
- no restructuring agreement in writing has been entered for the NPLs by 9 July 2001, and the NPLs are not part of a rehabilitation plan approved by the Bankruptcy Court before 9 June 2001.

Trade creditors, non-Thai banks and their branches are not eligible to transfer their NPLs to the TAMC.

Pricing

The price of the assets payable by the TAMC to the State Banks is the value of the collateral excluding personal guarantees. The rules prescribed by the TAMC Board shall determine the price to be paid if there is no collateral.

The price payable to private banks that opt to transfer NPLs to the TAMC is (1) the value of the collateral (excluding personal guarantees), or (2) the book value of the NPLs less the applicable reserve amount, whichever is less. Book value here means the total principal amount of the loan as at the date of transfer, together with accrued interest for the three-month period prior to the transfer date. If the collateral is land, its value is deemed to be the assessment price used by the Land Department in the calculation of land transfer fees.

Profit and loss sharing

The profit will be shared as follows:

- first 20 per cent – shared equally between the TAMC and the financial institution;
- additional profit not exceeding the difference between the book value and transfer price will accrue to the financial institutions;
- any further profits will accrue to the TAMC.

The loss will be shared as follows:

- first 20 per cent of transfer price – absorbed solely by financial institutions;
- second 20 per cent – equally shared by the TAMC and financial institution;
- remaining loss – absorbed by the TAMC.

Debt restructuring

One of the most interesting powers of the TAMC is its ability to restructure the debt by unilaterally amending loan terms, forcing a debt-equity conversion (despite the absence of a similar mechanism under present laws), taking assignments of debts or assets from the debtor to settle debts, and taking a transfer of shares or buying issued shares to increase the debtor's capital. For all these and other measures, only the approval of the TAMC Board is required. Certain procedures required under relevant laws are generally waived.

Business reorganisation

The Emergency Decree on the Thai Asset Management Corporation (the 'TAMC Decree') provides the rules and procedures of business reorganisation that are distinct from those provided under the Bankruptcy Act. The criteria for business reorganisation under the TAMC Decree are as follows:

- the debtor must be a limited company, a public limited company or a registered partnership;
- the TAMC is a creditor and is owed more than 50 per cent of the debtor's total debt;
- there is evidence that the business can be carried on and its rehabilitation will benefit the national economy;
- the debtor consents and agrees to be bound by the terms and conditions of business reorganisation under the TAMC Decree.

The TAMC Executive Committee appoints the planner who is tasked to draft the plan within the time limit set by the TAMC. Once the Executive Committee and the TAMC Board approve the plan, the TAMC shall file a petition with the Bankruptcy Court for it to consider the plan. From the date of court approval of the plan to the completion of business reorganisation, the automatic stay similar to that under the Bankruptcy Act is applied.

The plan may require a merger of the debtor's businesses, closure of part of the business, payment of other creditors participating in the business reorganisation, and other measures approved by

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Terms

A distinction must be made between procedural and legal terms. Those terms that amend provisions set in the IBL must be calculated as judicial business days, since this is the rule. However, those terms fixed by the Law referring to new provisions (suspension of petitions in bankruptcy, suspension of foreclosures, suspension of or ban on the order for precautionary measures) should reasonably be calculated as calendar days, according to the provisions of section 28 of the Civil Code, whenever the term is legal and not procedural in nature.

Corollary

We are dealing with an emergency law which suspends rights rooted and upheld by the national Constitution (property, jurisdiction, due process of the law, etc). As a consequence, the interpretation of this Law is necessarily restrictive in nature. ■

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the TAMC Board. In these circumstances, certain provisions under the Civil and Commercial Code and the Public Company Limited Act are waived.

Assessment

With good intentions but crippled by hastily drafted and obscure provisions, the TAMC Act has encountered much criticism and even a legal suit on its constitutionality. Finally clearing the constitutional hurdles in October 2001, the TAMC started accepting its first asset transfer on 15 October 2001.

It has recently been reported in the press that the TAMC has already restructured more than 43 billion baht in debt as of the end of January. These completed cases account for 43 per cent of the TAMC's target of 100 million baht by March 2002. For the entire year, the plan is to restructure 500 billion baht out of a total of 700 billion baht received from state and private banks.

The Bank of Thailand, however, has commented that the TAMC cannot gain all the credit for such restructuring. It was disputed that the terms and conditions for restructuring the loans had already been settled between the debtors and creditors under the Corporate Debt Restructuring Advisory Committee process. Be that as it may, against a backdrop of 1.6 to 1.7 trillion baht of NPLs, a transfer of 700 billion baht to the TAMC would hardly make a dent. Of this 700 billion baht, 610 billion baht represent assets transferred by state banks.

It is thus not surprising to note that bankers do not think of the TAMC as a panacea to the problem of NPLs. There are fears that it will be a vehicle to 'warehouse' the NPLs forever and that its value is limited only to the state banks which must get the NPLs off their books.

It is unfortunate that the inherent problems which make NPLs thrive remain, ie Thailand's weak foreclosure and bankruptcy laws, limited security/collateral laws, weak corporate governance standards, a deteriorating credit culture, and weak prospects for early economic recovery. Injecting more capital into the system is obviously not the answer. Thai banks are sitting on large surplus liquidity, but they have also learned their lessons. ■