



LSH Newsletter
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**BANKING AND FINANCE
PRACTICE GROUP**

Sale of Non-Performing Loan Transaction

During the past years, a number of Non-Performing Loan (“NPL”) in Thailand have been sold by Thai commercial banks, both through open bids and private negotiation, with certain objectives, including to reduce its burden to comply with banking reserve requirement. As a legal advisor, LSH has participated in several NPL Sale Transactions representing both sellers and purchasers.

This Newsletter is intended to flag out certain legal issues which the potential seller and the investors may need to take into account when involving in the sale and purchase of the NPLs in Thailand.

Using Asset Management Company as Acquiring Entity Provides Certain Special Benefits



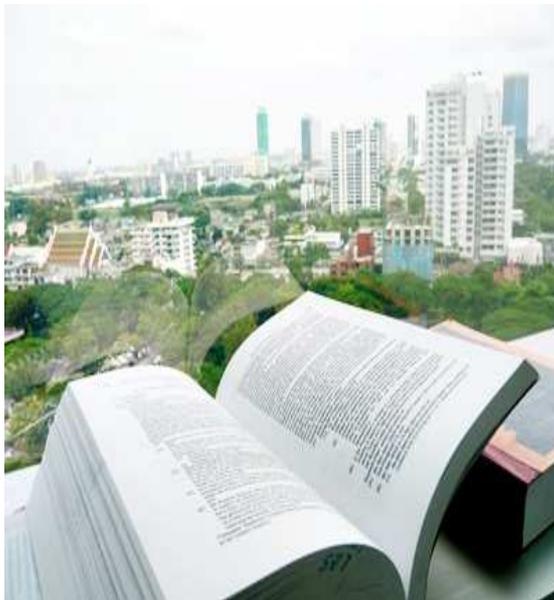
One of the attractive reasons for investor to use Asset Management Company (“AMC”) to invest in NPL is certain tax privileges which provides through an asset management company as defined under the Emergency Decree on Asset Management Company B.E. 2540 (1997) (as amended) (the “AMC Decree”). Not only the AMC Decree provides tax incentives to the purchaser but also exempts the seller who is a financial institution (as defined under the AMC Decree) from all taxes and fees which incur from the selling off or the transfer of asset. By this reason, most of the sellers prefer, especially in the sale through public auction, to sell their NPL portfolio to the asset management company (or so called the AMC). Apart from the tax privileges, the AMC Decree provides clear legal proceeding and consequences of the transfer of asset to AMC including legal rights over the collateral of the AMC or the continuance of the charging of interest at the rate charged by the financial institution which shall be for the benefit of the AMC after the transfer of the NPL, the substitution right of the AMC over the pending litigation cases and enforcement of claims.

Legal Due Diligence Might Need to Go Beyond Ordinary Issues

A due diligence result is a crucial factor for the investors to make its decision on the NPL price. Not only outstanding amount of loans or location of collaterals should be taken into consideration but it is also important for the investor to be careful on legal status, validity of the claims as well as possibility or in many cases difficulties and obstacles in enforcing those claims over NPL from the legal point of view. From our experiences, it is not uncommon that a number of collateral have been provided as collateral

for more than one loan, therefore, the collateral will need to be shared with other creditor(s). Failing to identify these crucial points, the investor may end up purchasing the NPLs at over price and the investor may find a complication or difficulty in dealing with other creditors(s) for the enforcement of such shared collateral.

Put-back Rights Provision Needs Careful Consideration



Normally, the NPL sale and purchase agreement will incorporate a provision called "Put-back Rights", which allow the investor to put-back (return) such borrower accounts to the seller within "Put-back Period" after the closing of the transactions. Normally the grounds upon which any borrower account can be put-back would be when the breach of the representations and warranties by the seller has been found.

It is therefore very crucial both for the seller and the investor to pay particular attention to the representations and warranties under the NPL sale and purchase agreement. In principle, the representations and warranties should be extensive enough to allow the investor to put-back such borrower account in return for the purchase price, if the value of such borrower account has been adversely affected.

From our experiences, the representations and warranties from the seller on the asset should, at least, include representations on lawful entitlements over any asset of the seller and non-omission of any material document and information of the seller to the purchaser.

On the other hand, the seller will need to ensure that this Put-back remedy is exercised by the purchaser reasonably and properly, otherwise the seller might encounter the situation where significant portion of the NPL have been put-back. Reasonable conditions and qualifications, and procedure of the Put-back event therefore might be necessary to minimize the Put-back only to the cases that are material. For example, the purchaser should be entitled to exercise Put-back Rights only when the value of the NPL purchased is materially and adversely affected by the misrepresentation or action of the seller. In addition, Put-back Period should be limited to a reasonable period of time in order to limit contingent liability of the seller in respect to Put-back Rights of the purchaser. However, the investor needs to be careful to ensure that such conditions, qualifications and procedure is not too restrictive such that no NPL can be legally and practically Put-back.

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**THERE IS ALWAYS
A SOLUTION.**

LS Horizon was founded on the vision of a Thai-based law firm delivering international quality legal services.

Today, LS Horizon has more than 50 attorneys, many of whom have previous experience at top-tier international law firms in Thailand and overseas.

LS Horizon deliberately focuses on providing legal services in select practices areas where we have expertise and are considered to be at the forefront.

Our current practices areas are

- Mergers & Acquisitions,
- Projects,
- Capital Markets,
- Corporate Real Estate,
- Banking and Finance,
- Private Equity & Foreign Direct Investment,
- Administrative Constitutional Law,
- Dispute Resolution and Employment & Labor.

Important Note and Disclaimer

The content of this Newsletter is prepared as of 29 July 2009.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.