



Legal Alert 法律快讯

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今天，体验未来的法律视界

Update on Laws Relating to the Auto Leasing

汽车租赁相关法律更新

On 15 August 2022, the Bank of Thailand (“**BOT**”) launched the consultation paper on the draft royal decree governing the business of hire-purchase and leasing of car and motorcycle (collectively the “**Auto Leasing**”) (the “**Royal Decree**”). The Royal Decree is enacted under Section 5 of the Financial Institution Business Act B.E. 2551 in which the BOT has the power to propose the enactment of royal decree to govern any businesses without supervisions by any regulators and having lending characteristics or financial business which affect to overall economy of Thailand.

2022 年 8 月 15 日，泰国银行（“**BOT**”）发布了关于汽车和摩托车分期付款购买和租赁业务管理方式（统称“汽车租赁”）的皇家法令草案（“**皇家法令**”）征询意见书。此次的皇家法令是根据《金融机构商业法》（佛历 2551）第 5 条颁布的，即 BOT 有权提议颁布皇家法令，来管理那些对泰国整体经济有影响，但不受监管机构监督的具有借贷性质的业务或金融业务相关机构。

Why Auto Leasing needed to be regulated?

The Auto Leasing business has been widely expanded in Thailand which is around 12.3 percent of the household debt resulting from the Auto Leasing. On that note, there are no specific laws governing this industry, either in terms of interest rates or any operations. In practice, these businesses have been operating by the non-bank operators broadly in Thailand without being specifically governed despite various complaints raised by the consumers. Currently, the interest rate in this industry can be higher than typical loans which can be much more than 15% per annum.

为什么需要对汽车租赁行业进行监管？

汽车租赁业务已在泰国广泛发展，泰国约 12.3% 的家庭债务来自汽车租赁。但无论是在利率方面还是在租赁业务运营方面，泰国暂时均没有规范该行业的具体法律。实践中，泰国的这些业务普遍一直由非银行机构在经营，尽管消费者提出了各种投诉，但尚未受到具体监管。目前，汽车租赁行业的利率高于一般的贷款，年利率可能远高于 15%。

Who will be subject to the Royal Decree?

Business operators who are juristic persons providing the Auto Leasing business as an ordinary course of business will be subject to the said law. However, the new law will not govern business operators who are already regulated by government agencies, such as commercial banks and special purpose financial institutions to avoid duplication of supervision.

谁将受到新规的约束？

将汽车租赁业务作为正常经营业务的法人经营者，会受到该法令的约束。但是，新法令将不对商业银行和特殊目的金融机构等已经受政府机构监管的经营者进行监管，以避免重复监管。

What is the main focus of the Royal Decree?

The Royal Decree will be mainly focusing on supervision of hire purchase and leasing of cars and motorcycles as normal trades which are not yet under any specific laws and regulators for consumer protection and financial stability.

Among other supervision measures, the BOT will also require business operators to provide disclosures to consumers, such as interest rates, service fees, and various penalties.

As for interest rates, the draft Royal Decree has not been set yet. However, Section 11 of the Royal Decree empowers the BOT to prescribe the interest.

该皇家法令的主要重点是什么？

皇家法令将主要针对作为正常经营业务的汽车和摩托车分期付款购买和租赁行为进行监管，以保障消费者利益和维护金融稳定。该领域之前尚未受到任何具体法律和监管机构的监管。

在法令规定的监管措施中，BOT 将要求经营者向消费者提供披露信息，例如利率、服务收费和各种处罚方式。

皇家法令草案尚未确定汽车租赁业务的利率，但在第 11 章节中授权 BOT 对利息进行具体规定。

Will the existing and new business operators be required to obtain a license before operating such businesses?

Neither existing nor new business operators are required to apply for a license from BOT to conduct the businesses. However, BOT requires business operators to “self-declaration” and comply with the BOT’s requirements, i.e., after the Royal Decree comes into effect, business operators are required to report information about their business operations and implementation to the BOT in accordance with the rules to be issued by the BOT, e.g., informing of product information, disclosure of interest rates, discount rates, and service fees, entering into a contract with the consumers etc.

现有和新的经营者在经营此类业务之前是否需要获得许可证？

无论是现有的还是新的经营者，都不需要向 BOT 申请许可证来开展此类业务。但 BOT 要求经营者“自我声明”并遵守 BOT 的要求，即在皇家法令生效后，经营者必须按照规定向 BOT 报告其经营和执行法令情况的信息，例如报告产品信息，披露利率、折扣率和服务费，与消费者签订合同等。报告的具体规则将由 BOT 后续制定公布。

Are there requirements on minimum capital, numbers or nationalities of shareholders and directors of the business operators imposed by the BOT?

There are no requirements for minimum capital, and nationalities of shareholders and directors of the business operators. However, Auto Leasing is subject to the Annex 3(21) of the Foreign Business Act B.E. 2542, where the foreign operator will be required to obtain the Foreign Business License prior to operating such business, unless they are financial institutions which are not under the restrictions of the Foreign Business Act.

BOT 对经营者的最低资本、股东和董事的人数或国籍是否有要求？

对最低资本、股东和经营者董事的国籍没有要求。但汽车租赁业务受《外商经营法》（佛历 2542）附件 3(21) 的约束。根据该规定，除不受《外商经营法》限制的金融机构外，外国运营商开展业务前需要取得外商经营证书。

Are there any penalties or regulatory sanction resulting from violation or non-compliance with the Royal Decree?

There will be both criminal liabilities and administrative powers for non-compliance. For criminal liabilities, the sanctions of the draft will be an imprisonment, fine, or both and will also capture directors, managers, managing partners who have management power or any person responsible for the operation of the business. As for administrative power, the BOT can temporarily suspend all or part of the operation within the specified time if the violation may cause harm to the public.

违反或不遵守皇家法令，是否会有任何惩罚或监管制裁？

对不遵守规定的行为将同时面临刑事和行政处罚。对于刑事责任，草案规定包括监禁、罚款或两者并罚，处罚对象涉及董事、经理、拥有管理权的管理合伙人或任何负责企业运营的人。至于行政处罚，如果违规行为可能对公众造成伤害，BOT 可以在规定时间内暂停全部或部分业务。

When will the Royal Decree become effective?

Currently, they are only in the hearing stage. The draft is for the Royal Decree to come into effect after 180 days from the date published in the Government Gazette. During this 180-day grace period, the BOT will prepare the BOT's Notification prescribing details and guidelines on regulating the Auto Leasing business, and to allow the business operators to adapt and understand the said law.

皇家法令何时生效？

目前暂处于听证阶段。皇家法令草案将在政府公报发布之日起 180 天后生效。在这 180 天的宽限期内，BOT 将准备并出台规范汽车租赁业务的具体指引公告，以帮助企业经营者了解和遵守上述法律。

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