

# THAI ASSET MANAGEMENT CORPORATION (TAMC)

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March 2002

Declared as Thailand's last chance to clean up its non-performing loans (NPL) mess, the Emergency Decree on Thai Asset Management Corporation, or TAMC Decree, came into force on June 9, 2001. Full of good intention but crippled with hastily drafted and obscure provisions, the TAMC Act has been riddled with criticism and even a legal suit on its constitutionality. Finally clearing its constitutional hurdles in October 2001, the TAMC started accepting its first lot of asset transfers last October 15, 2001.

Essentially, what is the TAMC and what is it empowered under the Act?

## **Rationale for Establishing the TAMC**

The rationale for establishing a national asset management corporation was to allow the government to address the high level of NPLs in both state-controlled and private financial institutions and to set the environment right for banks to recommence lending.

## **Structure**

The TAMC is a government agency fully owned by the Financial Institutions Development Fund (FIDF).

The TAMC will issue Baht 170 billion (approximately US\$3.7 billion) worth of 10- year notes guaranteed by the FIDF to financial institutions as payment for TAMC's purchase of NPL assets from these financial institutions. The TAMC is managed by a Board of Directors consisting of 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 transfers of sub-quality assets and their management. To realize such objectives, the TAMC has unprecedented encompassing powers, such as establishing limited companies, guaranteeing credit for debtors, and lending money to debtors.

## **Mechanics**

### **1. Transfer of Assets**

#### ***a. NPLs that can be transferred***

All state-owned financial institutions and asset management companies are required to transfer all NPLs falling under the following categories as at December 31, 2000:

- “loss” (required to be written off)
- “doubtful of loss” (requiring 100% provisioning)
- “doubtful” (requiring 50% provisioning)
- “sub-standard” (requiring 20% 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 must be a juristic entity) is indebted to at least two Thai financial institutions.
- The total value of NPLs owed by a debtor is at least Baht 5 million.
- No restructuring agreement in writing has been entered for the NPL by July 9, 2001, and the NPL is not part of a rehabilitation plan approved by the Bankruptcy Court before June 9, 2001.

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

#### ***b. Pricing***

The price of the assets payable by the TAMC to 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 the value of the collateral (excluding personal guarantees) or the book value of NPL less applicable reserve amount, whichever is lesser. 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 the assessment price used by the Land Department in the calculation of land transfer fees.

#### ***c. Profit and Loss Sharing***

Profit and loss will be shared as follows:

##### **Profit**

- First 20% will be 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 institution.
- Any further profit will accrue to the TAMC.

### **Loss**

- First 20% of transfer price will be absorbed solely by the financial institution.
- Second 20% will be shared equally by the TAMC and the financial institution.
- Remaining loss will be absorbed by the TAMC.

## **2. 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 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.

## **3. Business Reorganization**

The TAMC Decree sets forth the rules and procedures of business reorganization separate from those provided under the Bankruptcy Act. The criteria for business reorganization 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% 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 reorganization 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 then files 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 reorganization, the automatic stay similar to that under the Bankruptcy Act is applied.

The plan may require a merger of debtor's businesses, closure of part of the business, payment of other creditors participating in the business reorganization, and other measures approved by TAMC Board. In these circumstances, certain provisions under the Civil and Commercial Code (CCC) and the Public Company Limited Act are waived.

## **Assessment**

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

The Bank of Thailand, however, has commented that the TAMC cannot totally be credited for all such restructuring. It was argued that the terms and conditions for restructuring the loans had already been settled between the debtors and creditors under the CDRAC process. Be that as it may, in the backdrop of Baht 1.6 to 1.7 trillion of NPLs, a transfer of Baht 700 billion into the TAMC would hardly make a dent. Of this Baht 700 billion, Baht 610 billion consists of 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 NPL problem. An academic fears that it will be a vehicle to “warehouse” the NPLs forever and sees its value as 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, i.e., Thailand’s weak foreclosure and bankruptcy laws, limited security/collateral laws, weak corporate governance standards, deteriorating credit culture, and weak prospects for early economic recovery. Injecting more capital into the system, obviously, is not the answer. Thai banks are sitting on large surplus liquidity, but they have also learned their lesson.