Chapter 3

The Thai banking sector: characteristics, reforms, and internationalization

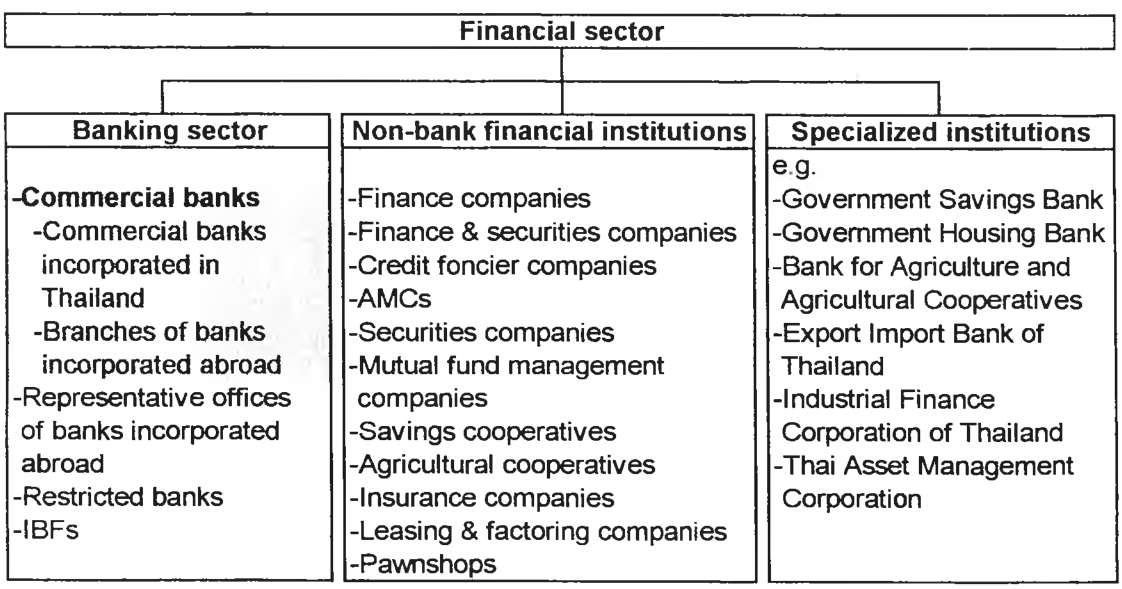
This chapter focuses on the evolution of foreign bank presence in the Thai banking sector as well as on differential treatment of foreign and domestic banks, and includes a brief discussion of the fundamental changes in prudential regulation that have been initiated since 1997 as well as of crisis-led rehabilitation measures.

3.1 System characteristics

Commercial banking in Thailand commenced with the establishment of a branch of the Hongkong and Shanghai Banking Corporation in 1888, followed by Standard Chartered Bank in 1894, Banque Indosuez in 1897, Four Seas Communication Bank (now Overseas-Chinese Banking Corporation) in 1909, Bank of Canton in 1919, and Mercantile (now Citibank) in 1923.[1] As a central bank had yet to be founded, some foreign banks played a significant role, issuing bank notes, acting as repository for the country's currency reserves and as clearing houses.[2] The Siam Commercial Bank, which informally started in 1904 as the Bcok Club, became the first domestic bank to counter the foreign dominance in 1906.[3] To avoid tensions with the established foreign banks, Deutsche-Asiatiche Bank of Germany and Den Danske Landmands Bank of Denmark were invited to be shareholders.[4] During World War II, most foreign banks were closed, leading to the opening of several domestic banks and consequently to a shift from a foreign-bank dominated system to a domestic-bank dominated system.[5] After World War II, foreign banks resumed their operations and new foreign and domestic banks were set up.[6] In the late 1970s, however, entry became highly restrictive. No new commercial banking license was granted between 1978 and 1996 (the last bank and the last foreign bank to be licensed was a branch of the European Asian Bank from Germany).[7] To fulfil its obligations under GATS, Thailand pledged in 1993 that ten additional commercial banking licenses would be granted by the year 1997.[8] Subsequently, seven foreign banks were granted licenses to operate branches in Thailand in November 1996.[9] The issuance of five new commercial banking licenses to local entities had also been planned, and two licenses were subsequently granted to consortia led by a finance company, General Finance, and a property company, MBK Property, but never came into existance.[10] Following the outbreak of the financial crisis in 1997, a new commercial banking license was granted to Radanasin Bank, which was established as a "good bank" to bid and assume for the assets of fifty-six closed finance companies in January 1998, and in April 2002 the first restricted bank, Thanachart Bank, was opened.[11]

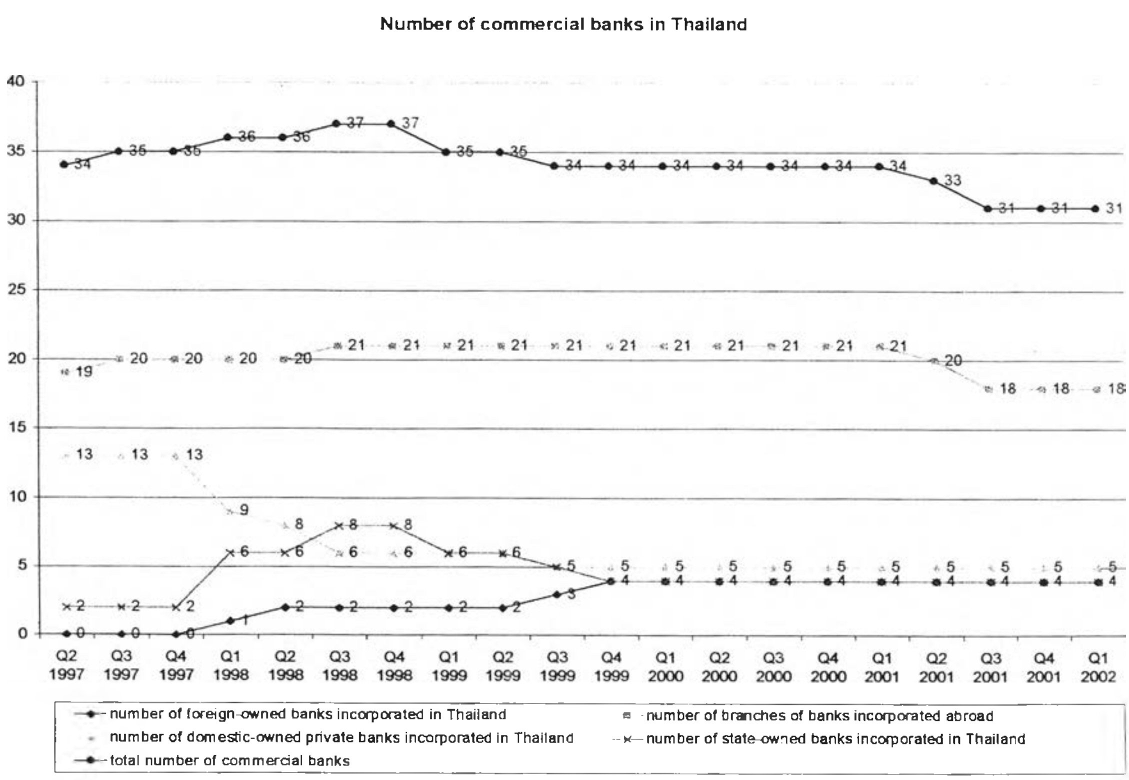
Changes brought about by the financial crisis drastically altered the structure of the financial sector in general and the commercial banking sector in particular. The financial sector comprises the banking sector, non-bank financial institutions, and specialized institutions established by the government.

Figure 3 Structure of the Thai financial sector[12]



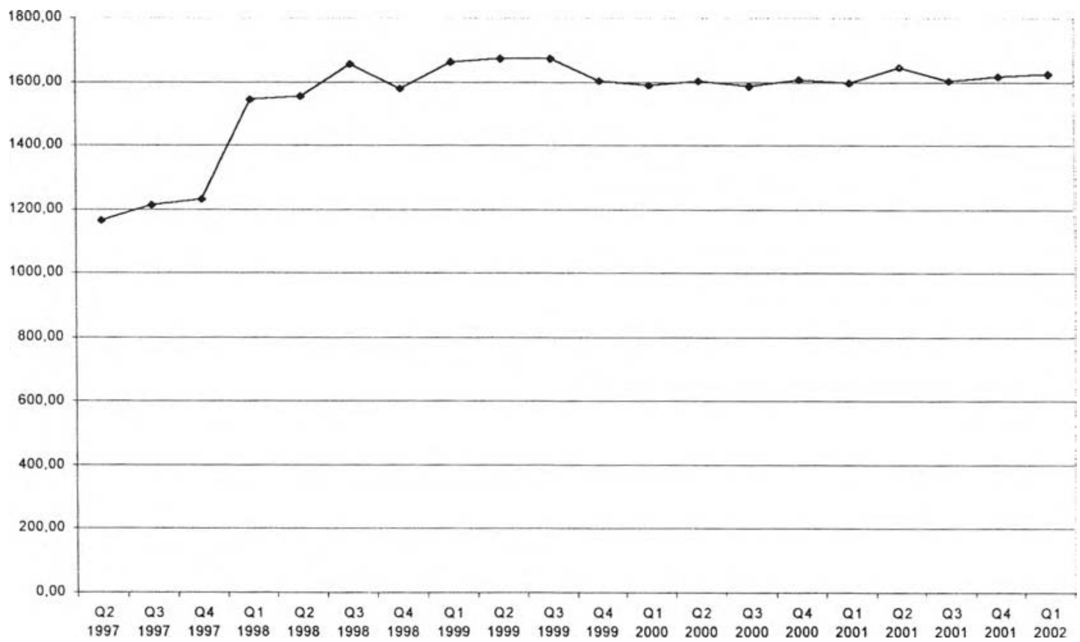
Following the onset of the crisis, fifty-six out of ninety-one financial companies were closed (many of which were controlled by commercial banks)[13], and seven commercial banks were nationalised and subsequently closed, merged, or sold. The economic turmoil led to some foreign banks closing their branches or representative offices in Thailand. While the commercial banking system consisted of 15 commercial banks incorporated in Thailand and 20 branches of banks incorporated abroad in December 1997[14], it comprised 13 commercial banks incorporated in Thailand, and 18 branches of banks incorporated abroad in June 2002[15]. The number of representative offices of banks incorporated abroad decreased from 40 in December 1997 to 23 in June 2002.[16] IBF licenses are currently held by 10 commercial banks incorporated in Thailand, 15 branches of banks incorporated abroad, and 8 banks incorporated abroad which neither have a branch nor a representative office in Thailand, compared to 12, 17, and 19 in December 1997[17], despite the fact that 7 new BIBF licenses were granted in December 1996[18].

Figure 4 Number of commercial banks in Thailand



Commercial banks have traditionally dominated the financial sector, capturing 76 percent of household savings placed at all financial institutions and extending 73 percent of credits offered by all financial institutions at year-end 1998.[19] The largest three private-owned commercial banks in turn dominate the commercial banking sector, having a combined market share of 42 percent in terms of assets as of March 2002, which indicates the high degree of concentration prevalent in the sector. Figure 5 shows that the Herfindahl-Hirschman Index (in terms of assets) increased substantially in the first quarter of 1998 due to crisis-led nationalizations.[20]

Figure 5 Thai commercial banking sector: Herfindahl-Hirschman Index[21]



Until 1997 the major owners of commercial banks were Sino-Thai families, which established banks to finance the operations of their business empires. Although, no person (except certain governmental entities) is allowed to hold more than 5 percent of a commercial bank's shares, where the term person includes related parties[22], banks already in operation by the time the law was enacted were exempted from the restrictions.[23] Besides, ways of bypassing the restrictions have been used.[24] The shareholding requirements mentioned above as well as those mentioned in section 3.2.3 were made futile by their non-application and extensive cross-shareholdings thus led to excessive power, economically as well as politically, concentrated in the hands of few.[25] Furthermore, as pointed out by Fitch Ratings (1998), "these [families] generally have other interests or have close friends with other interests, which led to powerful conflicts of interest", often resulting in substandard lending decisions. Although family ownership has decreased, family, corporate, and government connections continue to play a major role, especially since the two largest private banks, BBL, and TFB, have retained their connections. Although 49 percent of BBL, for example, which since its foundation has always cultivated strong relationships with politicians, are now held by foreign investors, these foreign shareholders are not involved in management as they, like other shareholders, are not permitted to hold a stake exceeding 10 percent.[26] Due to these internal guidelines restricting shareholdings, the Sophonpanich family was able to maintain the status quo, to retain control, and to further expand its connections. When the second Chuan Leekpai government was dissolved and elections were held in 2001, BBL, which had disapproved financial sector resolutions of the outgoing government, strongly supported opposition parties, and the candidature of the current Prime Minister, Thaksin Shinawatra.[27] Most domestic-owned banks incorporated in Thailand have set internal rules restricting foreign shareholdings.[28]

Table 1 Major shareholders of commercial banks incorporated in Thailand[29]

Bank	controlling interest pre-crisis	foreign share*	controlling interest year-end 2001	foreign share**
			domestic-owned private banks	
BBL	Sophonpanich family	25%	Sophonpanich family	49%
BAY	Rattanarak family	21%	Rattanarak family	24%
TFB	Lamsam family	25%	Lamsam family	49%
TMB	Thai armed forces	23%	Thai armed forces, FIDF	3%
SCB	CPB	25%	CPB, Sanwa Bank, MOF	45%
			state-owned banks	
SCIB	Mahadamrongkun family	25%	FIDF	0
UBB/BT	Chansrichawla family	20%	FIDF	0
KTB	MOF, FIDF	15%	FIDF	3%
			foreign-owned banks	
BOA	Phatrapraisit family	4%	ABN Amro Bank	79%
TDB/DTDB	Tuchinda family	9%	Development Bank of Singapore	62%
NTB/SCNB	Wanglee family	4%	Standard Chartered Bank	75%
LTB/UOBR	Chonwichan family	15%	United Overseas Bank	75%
			merged or closed banks	
FBCB	Charoen S. family		merged with KTB	
BBC	Jalichandra family		partially acquired by KTB	
BMB	Techaphaibun family		merged with SCIB	

* as of December 1997 ** as of December 2001

Following an era of protectionism, foreign participants once again start to influence the Thai commercial banking system as can be seen from Table 1.

3.2 Regulatory framework

Experiences in other countries have indicated that increased foreign entry and improvements in the regulatory framework can be reinforcing.[30] However, in the case of Thailand, recent reforms are rather crisis-led and preceded and/or coincided with the latest wave of foreign entry. However, Thailand's previous experiences with financial liberalization[31], and especially capital account liberalization, showed that the gains and benefits depend to a large extent on the supporting institutional framework, which had not been adequately adapted in the early 1990s, and thus recent reforms might have also been motivated by the "threat of foreign entry".

3.2.1 Regulatory laws and authorities

Core laws with respect to banking supervision and regulation are: the Bank of Thailand Act (1942, as amended), the Commercial Banking Act (1962, as amended), the Securities Exchange Act (1992), and the Emergency Decree on Financial Sector Restructuring (1997).

The BOT, authorised by the MOF, supervises commercial banks.[32] Supervision of the BOT is the responsibility of the MOF.[33] The effectiveness of bank supervision has frequently been undermined by political interference, as for example in the case of the Bangkok Bank of Commerce.[34] However, reforms have been initiated: a new Financial Institutions Act has been drafted and is under consideration of a joint House of Representative and Senate committee. The Bill is inter alia expected to empower solely the BOT with the supervision of financial institutions, to establish an adequate framework to regulate and undertake consolidated, risk-based supervision of financial institutions, to limit the power to grant individual exceptions, to codify prudential regulations, to introduce clear exit policies (including prompt corrective action), and to pave the way for universal banking in Thailand.[35] To replace the "blanket guarantee" given by the FIDF, the government intends to establish a formal limited deposit insurance scheme for retail depositors.[36]

3.2.2 Licensing

The power of issuance and withdrawal of banking licenses[37] is with the MOF. Currently, the following banking licenses exist: full commercial bank license, foreign branch license, restricted bank license, and IBF license.

(1) Full commercial bank

The Commercial Banking Act requires commercial banks, except a branch of a foreign bank, to be established as limited public companies, with a license granted by the MOF.[38] Thus, commercial banks are listed on the SET and have to comply with listing requirements (such as minimum equity of not less than THB 200 mln initially, maintenance requirement for paid-up capital of at least THB 60 mln[39]).

(2) Foreign branch

Foreign banks require a license, granted by the MOF, to establish a branch in Thailand.[40] The issuance is subject to the branch maintaining assets in Thailand of at least THB 125 million in value.[41] These assets must fulfil certain criteria as set out by the MOF[42] and are considered as capital funds with respect to capital adequacy requirements[43].

(3) Restricted bank[44]

The restricted bank license was introduced in December 1998[45] to encourage in-market consolidation of Thailand's remaining finance, finance and securities, and credit foncier companies and to attract new investment into the sector. To satisfy the license criteria, the applicants are required to merge with or acquire at least four other financial institutions, and to maintain a minimum paid-up capital of THB 10 bln and a minimum capital adequacy ratio of 15 percent over the first two years. The restricted bank license may be converted into a full commercial bank license by the MOF after five years of satisfactory performance.

(4) IBF

The IBF comprise the BIBF, established in March 1993 to develop Thailand as a financial centre, and the PIBF, introduced in August 1994 to facilitate the regional development of Thailand.[46] Both licenses are issued by the MOF.[47] BIBF licenses can be granted to either full commercial banks or branches of banks incorporated abroad, but also on a stand-alone basis. PIBF licenses are only granted to existing BIBF units.[48] IBF are not allowed to hold assets denominated in THB in Thailand of more than THB 100 mln in value as a reserve for administrative expenses, where these assets must be held in the prescribed form, in addition to those maintained with respect to the liquid assets requirement.[49] However, branches of foreign banks untertaking IBF business have to maintain assets in Thailand of at least THB 100 mln in value, where such assets can be maintained in any form.[50]

(5) Foreign bank representative office

Representative offices may only be established upon approval by the BOT.[51]

3.2.3 Sope of activities

(1) Full commercial bank

Commercial banks in general are allowed to undertake the business of commercial banking, which is defined as deposit-taking, credit extension, buying and selling of bills of exchange or any other negotiable instrument, and foreign exchange business.[52] They may also engage in any business, which is connected with or incidental to commercial banking business, or any business traditionally regarded as commercial banking practice.[53] Although the concept of universal banking does not yet exist in Thailand, the scope of business has been continually expanded to include, subject to individual permission:

- custodial services, loan syndication, advisory services with respect to mergers and acquisitions, feasibility studies (1987)[54],

- underwriting of debt instruments issued by public entities, information and financial consulting services (March 1992)[55],
- arranging, underwriting, and dealing in debt instruments, acting as representative of debenture holders, trustee of mutual funds, securities registrar and selling agent for investment units (June 1992, July 1995)[56],
- factoring activities (July 1997)[57],
- interest-free units in line with Islamic Banking (February 1998)[58],
- the use of the internet for undertaking of commercial banking business (December 1998, December 1999)[59],
- temporarily (January 1999 – December 2001) hire-purchase and leasing business resulting from debt restructuring (January 1999)[60],
- securities borrowing and lending, and short selling (September 2000).[61]

As noted before, equity holdings are restricted to prevent the concentration of power. Commercial banks are neither allowed to hold shares in any other commercial bank (banks acquired as a result of a debt settlement or a guarantee in respect of credit granted are exempted, provided that such shares are sold within six months or that such acquisition has been permitted by the authorities)[62], nor permitted to hold more than 10 percent of total shares of any limited company.[63] However, the MOF has granted exemptions. Since November 1997, not only foreign investors, but also domestically incorporated banks are allowed to hold shares in other financial institutions of up to 100 percent for a period of 10 years. Whereas foreign investors will be grandfathered after 10 years, domestically incorporated banks can apply for extension on a ten-year basis. For a period of 3 years, domestically incorporated banks may have the same directors as the financial institutions in which they hold shares. Extension may be possible if deemed necessary.[64] Furthermore, in November 1998, the BOT allowed commercial banks and BIBF offices to hold shares in a debtor company in excess of the general limit of 10 percent of outstanding shares, and to hold shares in debtors' companies exceeding 20 percent of their own capital until December 2004, if the shares were acquired as a result of debt restructuring set forth by the BOT.[65]

The establishment of branches is subject to authorization by the MOF[66], and -with respect to the establishment of branches in suburban and rural districts- the following conditions:[67]

- 60 percent of deposits originated in a region must be extended as credit in that region,
- one third of community credits must be to the agricultural or related sectors,
- any residual must be placed with the BOT should a branch not be able to fulfil the community credit target (alternatively, government/state enterprise bonds of up to 4.5 times the residual can be bought or GHB bonds of 3 times the residual).

Until February 2000, commercial banks were subject to regulations requiring that four upcountry branches had to be opened for every new metropolitan one[68] and that the four largest commercial banks must apply to open upcountry branches in no less than half of all their applications[69]. These restrictions have been waived, although regulatory approval of branch openings is still required. Sub-branches, however, can now be opened freely and commercial banks can also freely close branches or transfer branch licenses.[70]

ATMs can be opened without seeking approval since September 1994.[71]

Although directed credit allocation (apart from the requirements as mentioned above) was formally abandoned, moral suasion by the BOT is still used to influence growth and distribution of commercial bank lending.[72]

(2) Foreign branch license

The branch of a foreign bank is allowed to undertake the business of commercial banking[73], thus enjoying national treatment in this respect.

Since July 1996, foreign banks are only restricted to up to three branches (previously one branch in the capital city), with ATMs being regarded as branch.[74] The additional two branches are subject to the following conditions:[75]

1st additional branch (outside Bangkok Metropolis and adjacent provinces):

- license to operate one branch
- maintaining assets of not less than THB 1 bln
- realizing operational results beneficial to the Thai economy
- playing a role in the development of knowledge in the field of international finance

2nd additional branch (in Bangkok Metropolis and adjacent provinces):

- application to set up a branch outside Bangkok Metropolis and adjacent provinces submitted
- license to establish a PIBF office granted before 29 February 1996.

(3) Restricted bank [76]

The restricted bank operates as a commercial bank, but with the following restrictions: checking and overdraft facilities cannot be offered in the first 5 years of operation, savings deposits can only be accepted after the first year of operation, five branches are permitted, and further branch opening requires the approval of the BOT, changes in senior executives and shareholders of more than 5 percent of the issued shares require the approval of the BOT, and foreign exchange dealing is permitted only upon fulfilment of the BOT's requirements regarding risk control systems and qualified personnel.

(4) IBF license

BIBF are primarily allowed to engage in "out-out" transactions (transactions with non-residents in foreign currencies and THB), "out-in" transactions (transactions with residents in foreign currencies), and other international banking business activities, where funds must be mobilized abroad.[77]

PIBF are permitted to undertake IBF-transactions[78] only with customers, whose domiciles are in provinces other than Bangkok, Nonthaburi, Pathumthani, Nakhon Pathom, Samut Prakan, and Samut Sakhon. Funds must also be mobilized abroad.[79]

The scope of activities has lately been broadened in response to the financial crisis.

(5) Foreign bank representative office

As representative offices of foreign banks are not allowed to undertake commercial bank activities, they are restricted to non-income generating activities, such as research and business development. However, the representative office may be used to refer clients to offices outside Thailand and thus to get a hold in the Thai banking sector.[80]

3.2.4 Prudential regulations

In the wake of the financial crisis, prudential regulations have improved gradually. The most important amendments are outlined below.

Accrual of interest[81]

Effective July 1997 commercial banks had to cease accruing interest as income on accounts that are overdue for more than six months, whereas previously interest on secured, non-performing loans could be accrued for twelve months. Since January 1999 commercial banks had to stop accruing interest on any account overdue for more than three months, which is in line with international standards. Accrued interest on non-performing accounts has to be reversed out of income since January 2000. However, pre-existing accrued interest did not have to be reversed, but had to be provisioned and capitalized.

Loan classification and provisioning

Regulations regarding loan classification and provisioning were tightened in March 1998, effective July 1998 as illustrated in Table 2.

Table 2 Loan classification and provisioning requirements[82]

Category	Months in arrears	Provisioning	Months in arrears	Provisioning
Performing loans	< 12/6		< 3	
Pass	-	-	< 1	1%
Special mention	-	-	1-3	2%
Non-performing loans	> 12/6		> 3	
Substandard	> 6 (collateralised and uncollateralised part)	15%	3-6	20% (less 100, 95, 90, or 50% of collateral)
Doubtful	> 12 (loan splitting: uncollateralised part only, collateralised portion remained substandard)	100%	6-12	50% (less 100, 95, 90, or 50% of collateral)
Loss	e.g. collateral became valueless, death of borrower	100% or writeoff	> 12	100% (less 100, 95, 90, or 50% of collateral) or writeoff
	"old"		"new"	

The new provisioning requirements were phased in, starting from 20 percent of total required provisions by end 1998 and increasing by 20 percent every six months, to avoid further nationalisation of the banking system.

The amendments as outlined in Table 2 appear to be more in line with international best practices, especially since regulations for collateral valuation and appraisal have also been upgraded.[83]

However, the BOT relaxed the requirements in March 1999 and:[84]

- permitted the reclassification of non-performing loans as normal debts without obeying a period of three months (or three payment periods), subject to certain criteria, to encourage debt restructuring,
- adjusted loan classification criteria from an individual debtor to an account basis,
- relaxed the provisioning requirement with respect to loans of the category "pass".

Capital adequacy and liquidity ratios

While the capital adequacy ratio was maintained at 8.5 percent, the Tier-1 capital component was lowered from 6 percent to 4.25 percent in August 1998.[85] Furthermore, the provision for loans classified as "pass" was allowed to be included as Tier-2 capital, subject to the requirement that it does not exceed 1.25 percent of total risk weighted assets.[86] Effective June 1999, commercial banks were permitted to include CAPS and SLIPS as Tier-1 capital, provided these instruments do not exceed 25 percent of total Tier-1 capital compared to 33.3 percent previously.[87] CAPS and SLIPS are hybrid instruments, consisting of two components, non-voting preferred stock, paying dividends, and subordinated debt, paying interest. The recognition of the share component of CAPS and SLIPS as Tier-1 capital is in compliance with the recommendations of the Basle Committee.[88]

The ratio of capital funds to total assets and contingent liabilities (excluding IBF) to be maintained by foreign bank branches remains at 7.5 percent.[89]

In September 1997, the BOT reduced the liquid assets ratio on deposits from 7 percent to 6 percent for commercial banks and BIBF, where liquid assets since November 1999 must consist of (i) at least 1 percent (previously 2 percent) in non-interest bearing deposits with the BOT, (ii) no more than 2.5 percent in cash, (iii) unencumbered government securities, or other securities as approved by the BOT.[90] The cash-reserve ratio on short-term non-resident deposits and short-term borrowings was also reduced from 7 percent to 6 percent.[91] Assets to be maintained by foreign bank branches as capital funds must not include these liquid assets.[92]

Loan portfolio review[93]

Systematic loan portfolio reviews were introduced in March 1998. Since July 1998, commercial banks have to conduct qualitative reviews of their on- and off-balance sheet commitments and to submit the results to the BOT at the end of each quarter. These qualitative reviews have to cover at least 70 percent of outstanding credits, and the regulations require that lending practices as well as credit analysis procedures focus on borrowers' cash-flow and debt servicing ability rather than on collateral. Since 2000 loan review officers are required to be independent from individuals or committees who are responsible for credit risk management, credit extension, or audit.[94]

3.2.5 Accounting and disclosure standards

Financial statements must be complete, correct, and in compliance with the notes. They must be prepared in accordance with accounting standards issued by the Institute of Certified Accountants and Auditors in Thailand, and in the prescribed format.[95] Annual statements of listed companies must also contain information on risk factors, related party transactions, financial performance and status, and internal control systems.[96] Listed companies must have their financial statements (including quarterly statements) reviewed and audited by external and independent auditors.

Inadequate supervision and enforcement of regulations by the authorities as well as ineffective punitive measures rather than their scope have previously undermined the quality of financial statements as revealed in the aftermath of the crisis.[97]

3.2.6 Bankruptcy and foreclosure laws[98]

Amendments of the bankruptcy law, which provide greater protection for creditors advancing new loans for rehabilitation purposes by separating them from existing debt, and a framework for the restructuring of viable businesses, were announced in April 1998 and March 1999. As foreclosure had been impeded by the long processes, the foreclosure law was also amended to strengthen the rights of creditors. Furthermore, a new bankruptcy court was set up in June 1999. In a landmark case, the Central Bankruptcy Court ruled in favour of the petitioning Bangkok Bank against Thai Petrochemical Industries in March 2000, thus strengthening the credibility of the country's newly established legal framework for insolvency. By establishing and enacting a more clear and predictable framework, the government has also sought to encourage out-of-court workouts.

Summerizing, recent reforms have significantly strengthened the regulatory framework. However, weaknesses remain as outlined above. Increased foreign entry may contribute in two ways in the future:

(1) to promote rigorous enforcement of existing regulations, and

(2) to accelerate further improvements.

3.3 Recent rehabilitation measures

The government initially took a market-based approach in dealing with troubled banks, and rather than providing unlimited liquidity support through the FIDF, the BOT intervened to write-down capital and to change management.[99] The FIDF was then used to recapitalize the intervened banks, using debt-to-equity swaps.[100]

Table 3 Chronology of government interventions[101]

Bank	Date	Resolution
BMB	Jan 98	offered for sale
SCIB	Feb 98	offered for sale
BBC	Feb 98	all performing assets and liabilities acquired by KTB
FBCB	Feb 98	acquired by KTB
LTB	Aug 98	integrated with RSB, sold to United Overseas Bank
UBB	Aug 98	UBB and 12 intervened financial companies consolidated with KTT to form BT
NTB	Jul 99	sold to Standard Chartered Bank
BMB	Apr 02	merged with SCIB

To support bank recapitalization, two capital support schemes had been introduced in August 1998.[102] Under the Tier-1 capital scheme, the government injected Tier-1 capital in the form of tradeable government bonds, subject to stringent conditions and safeguards (e.g. right to change existing management, new capital enjoys preferred status over existing shareholders). Under the Tier-2 capital scheme, the government injected Tier-2 capital in the form of non-tradeable government bonds, if certain criteria were met. Only two banks[103], namely SCB and TMB, have entered the capital support schemes, which expired in November 2000, demonstrating the reluctance of banks to accept the dilution of ownership.

With the aim of facilitating and accelerating the sale of banks, the FIDF has entered into loan transfer, profit/loss sharing and/or yield maintenance schemes with the institutions listed in Table 4.

Table 4 Loan transfer, profit/loss sharing and/or yield maintenance schemes[104]

Arrangement							
Bank	Date of agreement	Start of implementation	Scope	LT	PL	YM	LM
SCNB	Q3 1999	Q3 1999	Non-performing assets	No	Yes	Yes	SCNB
UOBR	Q4 1999	Q4 1999	Classified loans	Yes	Yes	No	UOBR
KTB	Q2 2000	Q3 2000	Loans of KTB and FBCB which are more than 12 months overdue	Yes	No	No	KTB
BT	Q3 2000, Q1 2001	Q4 2000	Non-performing assets transferred from UBB and 12 financial companies	No	Yes	Yes	BT
SCIB	Q1 2001	Q2 2001	Non-performing loans	Yes	No	No	SCIB
BMB	Q2 2001	Q2 2001	Non-performing loans	Yes	No	No	BMB
LT: loan transfer agreement PL: profit/loss sharing agreement YM: yield maintenance agreement LM: loan management							

The loan transfers generally comprised the transfer of a defined non-performing assets pool to an AMC, owned by the FIDF, in exchange for promissory notes issued by the AMC and guaranteed by the FIDF. Should the bank continue to manage the pool it receives a management fee. Stand-alone profit/loss sharing and yield maintenance schemes typically entail a cash payment after 5 years, with the gain or loss shared in accordance with the criteria set out in the agreement, and half-yearly maintenance payments by the FIDF (e.g. averaged deposit rate plus one percent) over the period of 5 years. Banks entering such an agreement could subsequently reverse a substantial part of their loan provisions.

In addition, the government issued an emergency decree in June 2001 to set up the TAMC to buy THB 1.37 trillion of bad assets from banks (of which THB 1.12 trillion are to be purchased from state-owned banks) against 10-year bonds issued by the TAMC. Losses in connection with assets purchased from private banks will be split under a loss-sharing formula.[105] To date, eight domestic-owned banks as well as foreign-owned banks incorporated in Thailand have entered into an agreement with the TAMC.[106]

3.4 Degree of internationalization of banking services

As already indicated in the previous sections, a number of obstacles with respect to the internationalization of banking services in Thailand remain. These are primarily in the following areas:

Market access:

- **market structure:** oligopolistic
- **locally incorporated banks:** market access limited to the acquisition of stakes in existing banks, 100 percent foreign ownership of domestic banks (i) only permitted until 2007, when new foreign equity will be limited to 49 percent, and (ii) subject to the approval of the MOF upon recommendation of the BOT[107]

Operating controls:

- **branching:** banks incorporated abroad restricted to a maximum of three branches
- **ATMs:** ATMs of banks incorporated abroad are regarded as a branch, ATM operations of banks incorporated abroad are permitted under the following conditions only:[108]

  (1) joining ATM pools operated by domestic-owned banks incorporated in Thailand, which requires the approval of network members

(2) operation within own premises or sharing the facilities with other commercial banks in Thailand

- **foreign personnel:** to be eligible to employ foreign personnel, the following criteria must be met by a commercial bank incorporated in Thailand:[109]

    - registered capital of at least THB 2 mln: one foreigner can be employed for every THB 2 mln of capital, or
    - tax payments of at least 5 mln in the last 3 years: one foreigner can be employed for every THB 5 mln in tax, or
    - employment of no more than 5 foreigners: ratio of 50 Thai workers to one foreigner

Tax:

- **withholding tax:** funds raised for BIBF out-in transactions are subject to a withholding tax of 10 to 15 percent, whereas funds raised through overseas branches of a Thai bank are not subject to a withholding tax[110]
- **repatriation of profits:** foreign firms operating in Thailand are subject to a 10 percent tax on the repatriation of profits earned[111]

Others:

- assets to be maintained by banks incorporated abroad have to be invested in low-yielding instruments.

Thailand's commitments under the GATS/FSA have at best bound the status quo, i.e.[112]

- mode 1 (cross-border supply):

- limitations on market access: none for financial advisory and financial data processing services, for all other services unbound
- limitations on national treatment: none

- mode 2 (consumption abroad):

- limitations on market access: none for financial advisory and financial data processing services, for all other services unbound
- limitations on national treatment: none

- mode 3 (commercial presence): different forms of commercial presence as outlined above and in section 3.2.2

(a) representative office:

- limitations on market access: none
- limitations on national treatment: none

(b) foreign bank branches

- limitations on market access: as indicated above (ATM operation, branching, license)
- limitations on national treatment: none, except as indicated under market access

(c) locally incorporated banks

- limitations on market access: as indicated above, except that at least three-fourths of the directors must be of Thai nationality and that the maximum foreign equity participation is limited to 25 percent of paid-up registered capital (the MOF upon recommendation of the BOT may relax these limits, subject to the terms and conditions announced by the MOF, including the following: the relaxation is deemed necessary to improve the condition of the commercial bank, and such equity participation will be authorized for a period of up to 10 years, with foreign shareholders who enter in this period being grandfathered thereafter with respect to the absolute amount of their equity holding).
- limitations on national treatment: none, except as indicated under market access

(d) IBF

- limitations on market access: as mentioned in section 3.2.2 (license)
- limitations on national treatment: none, except as indicated under market access

➢ mode 4 (presence of natural persons):

- limitations on market access: limitations on the number of foreign personnel:

  (1) branch of a bank incorporated abroad: 6 persons

  (2) BIBF branch: 4 persons

  (3) branch of a bank incorporated abroad and BIBF branch: 8 persons

  (4) PIBF branches: 2 persons

(5) representative office of a bank incorporated abroad: 2 persons

- limitations on national treatment: none

All commitments are subject to horizontal commitments.