

เรื่อง การประเมินหลักเกณฑ์และขั้นตอนการดำเนินงาน (Independent Third Party Review) ขององค์การเพื่อการปฏิรูประบบสถาบันการเงิน (ปรส.)

นายสุภรัตน์ วัฒนกุล ผู้อำนวยการสำนักงานเศรษฐกิจการคลังได้แถลงในวันนี้ (16 ธันวาคม 2541) ว่า ตามที่กระทรวงการคลังได้ตกลงว่าจ้างบริษัท Barents Group LLC และบริษัท KPMG Peat Marwick Suthee, Thailand ให้เป็นคณะผู้ประเมินอิสระเพื่อประเมินหลักเกณฑ์และขั้นตอนการดำเนินงาน (Independent Third Party Review) ขององค์การเพื่อการปฏิรูประบบสถาบันการเงิน (ปรส.) ทั้งนี้เพื่อให้เป็นไปตามคำริของรัฐมนตรีว่าการกระทรวงการคลัง และตามเงื่อนไขที่ระบุไว้ในหนังสือแสดงเจตจำนงเกี่ยวกับนโยบายเพื่อการพัฒนา (Letter of Development Policy) ของธนาคารโลก และตามหนังสือแสดงเจตจำนงขอรับความช่วยเหลือทางวิชาการและการเงินฉบับที่ 4 (Letter of Intent 4) ของกองทุนการเงินระหว่างประเทศ นั้น

บัดนี้ คณะผู้ประเมินอิสระฯ ได้นำเสนอรายงานผลการประเมินดังกล่าวมาให้กระทรวงการคลังแล้ว ดังปรากฏตามบทสรุปผู้บริหาร (Executive Summary) ที่แนบ

การประเมินอิสระครั้งนี้ นับเป็นครั้งที่สอง โดยในครั้งแรก The SECURA Group ได้ทำการประเมินหลักเกณฑ์การดำเนินงานของปรส. เมื่อวันที่ 21 พฤศจิกายน 2540 การประเมินอิสระในลักษณะนี้นับเป็นการตรวจสอบความถูกต้องและความโปร่งใสในการดำเนินงานของปรส. ซึ่งจะก่อให้เกิดประโยชน์แก่ผู้เกี่ยวข้องทุกฝ่าย รวมทั้งประโยชน์ของประเทศชาติโดยรวม

EXECUTIVE SUMMARY

TERMS OF REFERENCE:

Objective: Ratify, as appropriate, that the policies and procedures adopted by the FRA Board - within the parameters set by the FRA Act and the constraints imposed by the market -with regards to the management and disposal of assets of the fifty-six finance companies not authorized to reopen are fair, transparent, non-discriminatory, and seek to maximize value for the creditors of these finance companies.

Approach:

1. *Institutional capacity.* Perform an independent review to assess the organizational structure and administration of the FRA. The review will encompass all aspects of the FRA's activities, including institutional capacity in the areas of internal administration as well as administration of the finance companies taken over by the FRA. The review will also comment on arrangements to ensure that the public is adequately informed of FRA's activities and performance.
2. *Asset disposal policies and procedures.* Review the detailed guidelines and procedures which govern the disposal of assets by the FRA. For the core financial assets, these would include Board-approved policies for determination of the speed and modality of disposition, timing of the auctions, portfolio tranching, data room information, and bid submission and evaluation. The review will also briefly touch upon the procedures for sale of non-core assets (furniture, vehicles, securities, etc.)
3. *Open issues:* Perform an independent review of the remaining issues that will need to be addressed if the FRA is to fulfill its mandate.

The above components set the foundation for providing a system of checks and balances designed to ensure the integrity of the FRA process and protection of public interest, in line with international standards.

TIMING, EFFORT AND APPROACH:

On 5 November 1998, the Fiscal Policy Office, Ministry of Finance, contracted with Barents Group, LLC, in association with KPMG Peat Marwick Suthee, to conduct this Review. The Barents/KPMG team began formal work on Sunday, 8 November and completed its Final Draft - Final Report on Sunday, 22 November, for delivery to the client on Monday, 23 November 1998, as agreed. The contract called for 53 person-days of professional time (33 expatriate and 20 local). Barents/KPMG delivered 68 person-days of professional time (43 expatriate and 25 local). During the Review period, the Barents/KPMG team conducted approximately 60 formal interviews, more than 100 less formal interviews and spot inspections, reviewed more than 9,000 pages of relevant information, executed random samples and other analysis to arrive at the *Summary and Key Findings, Conclusions and Recommendations*, which follow.

SUMMARY:

In the independent judgement of the Barents/KPMG team:

1. FRA has adopted policies and procedures within the scope of the FRA Act and its Amendment, and within the scope of related laws / regulatory procedures in Thailand. There are no material differences between FRA's stated policies and procedures vs. the actual practices of the FRA.
2. Within the constraints imposed by prevailing market conditions, and acting on the best information and professional judgement available, FRA has:
 - a. Acted in a fair, transparent and non-discriminatory manner.
 - b. Acted in a manner to maximize value realization for creditors.

In brief, FRA is a model for other countries to follow when facing a similar situation, i.e., the need (and the resolve) to deal with failed financial institutions promptly. FRA has achieved more results, more quickly than any other organization of its kind in the world in its first year of existence. Other organizations have achieved more over a longer period, but FRA stands out as an example of how such activities can be done at an unprecedented pace, with due consideration to fairness, openness and transparency, while acting consistently to maximize returns under extremely difficult local, regional and global market conditions.

FRA has rapidly built world-class *institutional capacity*, generally matching its evolving needs and flexibly adjusting to volatile workloads. It has a well-defined organization structure and has recruited talented local staff, supplemented prudently by external specialists (local as well as international). FRA's Board and management have acted within their charter. There are appropriate rules and procedures to insure fairness, openness and transparency, with no material differences between stated procedures and actual practice. Going forward, FRA will need to continue to develop its public and external relations capabilities, and to resolve a number of complex legal and regulatory issues, such as creditor claims and assets in litigation.

FRA's *asset disposal policies and procedures* are largely consistent with international best practices. Its sales promotion, bidder qualification, bidding rules, information disclosure, auction approaches, contract, settlement and transfer methods, and post-sale procedures are clear, documented and disclosed to achieve fairness, openness and transparency. There are no material differences between stated rules and actual practices. In some areas, FRA has introduced innovations, which set a new level of international best practice. FRA has acted to maximize asset value recovery under very difficult local, regional and global conditions, using the best information and professional judgement available at the time of each major decision. Going forward, FRA should consider new sales alternatives for assets remaining after the December sale, and make final preparations for the ultimate, full closure of the FCTs.

Items treated as *open issues and other considerations* generally fall into one of two categories. Some represent valid, professional differences of opinion (e.g., pace of sales, sequencing/sizing of lots, etc.). Other cases involve some level of technical misunderstanding, incomplete information or misinformation in the public domain (e.g., "The Lehman Case", conflicts of interest within FRA, etc.). Overall there is some room for improvement in selected policy/procedure areas, but these represent "continuous improvements", not an abrupt change of course. In all cases, it is clear that FRA has acted within its charter, after due deliberation, based on the best information and professional judgement available to it at any given point.

KEY FINDINGS, CONCLUSIONS AND RECOMMENDATIONS:

- The Financial Sector Restructuring Authority (FRA) is a sophisticated, world-class institution focused on the take-over and administration of failed finance companies and the disposal of related assets.
- In slightly more than one year of existence, FRA:
 - Started with a few key staff, acquired high-quality recruits and external resources to effectively, objectively, and transparently evaluate the rehabilitation plans of several of the 58 suspended finance companies.
 - Started building (immediately upon ratification of its recommendations to allow only two of these finance companies to resume business) the necessary organization to deal with winding down the 56 Finance Companies Taken Over (FCTs), with assets of approximately US\$20 billion in book value.
 - Rapidly built the capacity to take inventory, assess, categorize and develop strategies to deal with the complex process of administration of the FCTs, various methods of disposing of assets, downsizing FCTs at a pace that would preserve their ability to control/service the assets/activities that remained, while at the same time, reducing unnecessary costs as quickly as possible.
 - Identified, evaluated, selected and contracted for a variety of auction and sales specialists to promptly deal with readily disposable non-core assets (e.g., vehicles, artwork, club memberships, furniture, listed / unlisted securities, etc.).
 - Acquired highly talented local staff, supplemented by specialist external advisors for the even more complex processes of disposing of core assets in a fair, transparent, prompt and professional manner, so as to maximize asset value realization for the creditors of the FCTs.
 - Educated the public in general about the concepts of FRA-type institutions, dealt with the media, various governmental institutions, political and economic pressures, multilateral donor conditionalities, creditor committees, and various other "stakeholders".
- In brief, FRA is a model for other countries to follow when facing a similar situation, i.e., the need (and the resolve) to deal with failed financial institutions promptly, with appropriate due diligence, rational transparency, and fairness.
- From the viewpoint of the Barents/KPMG team, in its first year of existence, FRA has achieved more results, more quickly than any other organization of its kind in the world. Other FRA-type organizations have done more over a longer period of time, but FRA stands out as an example of how such activities can be accomplished at unprecedented pace, with due consideration towards fairness and transparency, while maximizing returns under extremely difficult local, regional and global market conditions.

- This has not been done without controversies, many of which represent rational, professional differences of opinion, and others which may be more emotional and/or motivated by other factors. For the most part, FRA has responded well in the past with general information programs, media campaigns, sales promotions, and building external relations capabilities.
- In the larger context, FRA has been part of a comprehensive overall program, including, but not limited to:
 - Proposed or "in-process" reforms in bankruptcy laws and foreclosure, bank and financial institution restructuring, corporate financial restructuring, and the like.
 - Improved accounting/reporting standards, and general transparency.
 - Privatization of state-owned enterprises.
 - A broad set of initiatives in improved government and governance.
- All of which are being continued and expanded upon for Thailand to recapture its positive growth and developmental trajectory.
- FRA has been on the leading edge of those reforms, creating markets where there were none before or where prior markets had ceased to function, contributing (along with many other factors) to improvement in liquidity, strengthening of the Baht, and the restoration of international investor confidence in Thailand.

Institutional Capacity:

- FRA is well organized, staffed with top-quality local personnel who are supplemented by carefully selected international advisors. FRA's charter, mission, organizational unit objectives, work flows and decision making processes are clear, relatively complete and generally in accordance with "international expectations." In certain operational and sales areas, FRA has been particularly innovative and has set new standards for international "best practices"; it is a clear leader from a regional perspective, relative to similar institutions in other Asian countries with financial sector difficulties.
- At an operational level, a variety of anecdotal evidence suggests that FRA has generally achieved international levels of efficiency. FRA has recruited high quality Thai staff at local market rates, leveraged them appropriately with selected external advisors, and made effective use of temporary specialist and clerical staff. However, such observations are only considered as "generally indicative", due the lack of comparable measurements and differences in accounting and staff counting approaches from country to country, which makes most ratio comparisons less than totally conclusive. In any case, the Barents/KPMG team's experience-based judgements are unanimous that FRA has achieved relatively high levels of productivity, efficiency and quality.
- FRA exhibits many attributes of a private-sector "corporate culture" (e.g., relatively rapid decision-making, rigorous goals/objectives/tables and a measured level of risk-taking relative to achieving goals and objectives on

schedule), tempered to a certain extent by governmental oversight and regulatory supervision.

➤ FRA's private-sector culture is also a natural source of friction in its interactions with selected governmental agencies and authorities with which it must cooperate or to whom it must report. State-owned enterprises and governmental agencies often exhibit rather different methods of operation (which are, from a "corporate culture" view point, generally more deliberate and consensus-oriented in decision-making, less schedule-driven and more "risk-averse").

➤ As a result of these factors, and in the context of FRA's current stage of organization evolution, asset disposal, etc., the Barents/KPMG team recommends the following elements as part of a "continuous improvement" program for the FRA organization:

- Upon completion of the December auction, strengthen organizational focus on inventory, strategies, alternative approaches, etc., for disposal of core assets still remaining.
- Continue to strengthen the public relations area in advance of the December sale, anticipating the need for contingency plans and media management.
- Continue to strengthen external relations areas, including creditor relations, with an aim to be more directly and more clearly responsive to all questions, issues, allegations, etc., as well as to be seen as more "active listeners" and more flexible in adjusting to local as well as international concerns.
- Continue to strengthen internal and external advisory resources in the areas of creditor claims and settlements, assets in litigation, and the final stages of winding down (and ultimately, the extinction) of the FCTs. Note that this may also include the need for special legislative, regulatory and/or judicial actions.
- Continue to maintain its focus on prompt, fair, transparent and open disposition of FCT assets and the aggressive winding-down of their remaining operations, in accordance with the FRA charter and mission.

➤ As FRA enters its "final stages" of organizational evolution, in completing its mission and winding down its own activities, care should be taken to:

- Capture FRA's "Intellectual Capital", lessons learned and best practices in a collection of reference works, a library-type facility, or some other means to preserve their value.
- Place FRA's exceptionally talented local staff in positions with other companies or organizations where their skills will be most productive.

Allow sufficient time for due consideration of alternatives for the full closure of the FRA, including the final disposition of all remaining assets, materials, intellectual capital, etc. in an appropriate manner.

- Begin now to capture all necessary information to be able to properly defend FRA's decisions, actions, etc., and ultimately, to calculate the fully burdened cost of FCT resolution in Thailand.

Asset Disposal Policies and Procedures:

- FRA's asset disposition policies and procedures are clear, well defined, within the scope of FRA's charter/mission/vision and consistent with generally accepted internationally common approaches and "best practices".
- A review / sampling of ten volumes (1,200 pages) of Board minutes supports the conclusion that there were no material shortfalls in policies and procedures required for successful asset disposition, in accordance with international standards and "best practices". In addition, Board minutes/interviews support the conclusion that policy matters were decided upon expeditiously, with due deliberation and careful consideration of the best information and professional judgement available. Subsequently, clear direction was promptly given to key executives for implementation.
- In reviewing the sales results to date, the selection of the auction methods of disposition resulted in an expedient sales process, which has generally achieved "fair market prices" (based on the level of bidder participation and generally comparable asset transactions elsewhere), given present local, regional and global conditions.
 - FRA's auctions have created markets where there were none before or where previous markets had ceased to function in Thailand.
 - While there are no reliable "indices" or solid measures of performance on a country to country basis, the experience-based judgement of the Review team is that FRA has achieved "fair market values" at the point at which each prior FRA auction has been executed.
 - FRA's Board has decided the outcome of each sale on the basis of the best information and professional judgement available at the time. There was due consideration of such factors as operating and carrying costs, risk/reward tradeoffs in re bidding, and equal, fair treatment among creditors, bidders and borrowers, in the context of FRA's charter, role and mission as asset disposal agent.
- The opinion of experienced advisors is that reducing the burden of distressed assets expeditiously restores the confidence of the investment community and thereby strengthens the economic recovery process. Investors indicate that they have factored in Government's commitment to improve bankruptcy laws and other reforms, and no major increase in asset values can be expected by marginal auction delays waiting for such laws to be passed. Conversely, there are significant market and systemic risks in substantial auction delays, or any material setback in the overall reform program for Thailand.

- The relatively high level of investor interest and participation in FRA's asset sales programs to date indicates that FRA has been successful in establishing their credibility in marketing the FCTs' assets in both the domestic and foreign marketplaces.
- Considering the large quantities / values of distressed assets available in the regional marketplace, the general level of servicing / asset management capacity in place, other local conditions and relative shortage of capital, the FRA's sales results to date generally meet or exceed regional expectations, and meet international expectations in situations of a similar nature (based on a comparison of generally similar asset transactions in Asia recently, and prior global / other region experience in distressed asset sales). While there are no reliable "indices" or solid measures of performance on a country to country basis, the experience-based judgment of the Review team is that FRA has achieved "fair market values" at the point at which each prior FRA auction has been executed.
- For FCT assets remaining after the December sale, FRA should obtain a binding legal opinion on various legal issues (e.g., "rights of succession" for assets in litigation) and consider additional alternative sales strategies for the broad mix of assets that remain unsold at that point.
- Despite consideration of additional sales strategies and more testing of local as well as international investor interest in such strategies, FRA should not lose sight of proceeding with all due speed (in accordance with its charter), in the prompt disposition of FCT assets and winding down FCT operations. Prompt, fair, transparent action tends to serve the best interests of valid creditors, the public and taxpayers in general, as well as contributing to the restoration of domestic and international investor confidence in Thailand.

Open Issues and Other Considerations:

- "*The Lehman Case*": The Barents/KPMG team found no basis whatsoever of any wrongdoing or misconduct on the part of Lehman Brothers, neither in their role as advisors to FRA, nor on the part of a separate Lehman entity as bidder in any sale. As advisors to FRA, Lehman was responsible for pre-sales promotion, soliciting investor interest/preferences, general advice on strategy, packaging, sequencing and the like. To perform these duties, Lehman needed access only to general information as to the types and book values of assets to be sold. The Review team concluded there was *no opportunity* for Lehman, as FRA's advisor, to obtain information of any bid value in advance of all other interested parties receiving substantially the same information. FRA has proper and sufficient "compartmentalized information" and "access controls" to bar improper access to information, data or files with bid value prior to the general dissemination of that information and/or access. Less than one third of 14 bidders interviewed as part of this Review stated any "discomfort" with "appearances", and none stated that it would prevent them from bidding in the future. Conversely, two thirds of all bidders interviewed indicated "no discomfort", and that Lehman, as advisors to FRA, had "gone out of their way to be helpful, encouraging, fully responsive and thoroughly professional".

- *Hire Purchase Cash-Flow Issues:* There were no improprieties in disclosure, bidding or settlement related to the Hire Purchase (HP) sale, and there is considerable "misinformation" in the public domain. No bidder was ever paid more than they bid for these contracts. The nature of deposits, ownership of cash flows, process of net settlement, etc., were entirely clear, transparent, and consistent with international standards. FRA acted in strict compliance with stated policies and procedures. At the time of the HP sale, there were timing difficulties in obtaining timely, quality information on cash flows from the FCTs which prompted relatively lengthy gaps between accounting, bidding and settlement dates, but since then, there has been a suitable improvement in data flows and timeliness. FRA's Board decided the outcome on the HP sale on the basis of the best information and professional judgement available to it at the time of the sale.
- *Potential Conflicts of Interest within FRA:* The FRA Board of Directors is properly constituted, with highly regarded individuals representing a broad variety of backgrounds and experience; extensive reviews of Board meeting minutes and more than six hours of interviews with individual Board members indicate that the Board has consistently acted in ways consistent with FRA's charter, role, mission and objectives. Employees and contractors within FRA are carefully screened; former employees of failed finance companies are more carefully vetted internally, and screened via Bank of Thailand for their independent view as to whether or not such staff are "fit and proper" to be employed by FRA. This FRA Review did not encounter any incidence of misconduct motivated by any internal "conflicts of interest" within FRA.
- *Legal/Regulatory/Policy Areas for Improvement:* The Barents/KPMG does not recommend any major change to the legal, regulatory or policy framework for the FRA. There are several areas for marginal improvement and a number of difficult legal issues to be resolved, such as "succession of claims" for any assets in litigation. However, FRA senior officials have begun to address these areas, and the necessary strengthening of related organizational units as FRA continues to evolve through its "project-oriented life cycle".
- *Benchmark Price Setting:* Based on extensive interviews with appropriate FRA staff, in-depth reviews of relevant models, and an independent random sample of loan files, the Barents/KPMG team concluded that the Benchmark Pricing approaches used by FRA are appropriately robust by asset type and generally consistent with international standards. There is no indication of any structural intent, pattern, policy or practice to set the Benchmark Price "too low" or "too high". In addition, the Benchmark Price has not been used as a "reserve price", and it is not set at a level which would "guarantee" buyers at that level any "minimum" or "target" percentage return on investment.
- *Risk/Reward Tradeoffs in Sales Timing:* There is an ample and growing body of evidence that prompt, professional asset disposition of from failed financial institutions is the most cost-effective approach for creditors, taxpayers, overall financial systems, national economies, and investor confidence (both domestic and international). However, it is often not the most popular or politically expedient alternative. FRA was established with a charter and mission to deal with FCT assets and the winding down of their operations promptly, balanced with openness, fairness and transparency. These are extremely difficult and

occasionally conflicting objectives. However, there is ample evidence that FRA has conducted itself professionally, and acted consistently on the basis of the best information and professional judgement available to it at any given point in time.

- *Policy of Borrowers Bidding on Their Own Loans:* International practice is to prevent (by law or by procedure) former owners from buying back their failed financial institutions, or defaulted borrower from buying their own loans at auction. Former owners and defaulted borrowers are usually given a first chance to “make good” on their obligations, but if they are unable to do so, liquidation action often follows promptly. FRA has spent considerable time, energy and due deliberation to develop a policy that defaulted borrowers can only bid on tranches if their own obligations total less than 10% of total book value of that tranche – a practical compromise between international standard practice and local considerations. FRA implements this policy via appropriate bidder pre-qualification and screening, and includes appropriate penalties (e.g. rescinding the sale and meaningful fines) for improper conduct. There are no material gaps or shortfalls in FRA’s actual implementation of these policies.
- *The December Sale, Lot Sizes and Asset Groupings:* The recent 13-day delay in staging the December Sale was a proper response to broad-based investor requests for more time to conduct their pre-bid due diligence reviews. The increase in the number of tranches, and reduction in average lot size, was also responsive to both local and international small investors’ requests. There is ample evidence of due deliberation in the allocation of assets to tranches. A wide variety of alternative structures were considered, and there is absolutely no indication of any intent to “favor” or “disfavor” any borrower(s) by either consolidating their loans into a single tranche or in spreading single-borrower loans into different tranches.
- *Reallocation of Bid Amounts to FCTs:* On occasion, FRA has reallocated bid amounts to credit the accounts of FCTs whose assets were sold. Bidders bid at the tranche level, and do not always take proper care in allocating the total bid to FCTs. Therefore, FRA occasionally makes reallocations to correct “short-cuts” taken by bidders, to be fair to the creditors of the FCTs. FRA used rational, defensible techniques to conduct the reallocations, and may be well-served by being more open and specific with creditors (and the public) to explain its rationale, approach and the net results of such reallocations.
- *Tranches by FCT vs. “Blended Tranches”:* FRA has devoted several person-years of staff and advisor time in considering alternative tranche structures. After due consideration, FRA decided against structuring tranches by FCT as a proper response to investor preferences. It would have been easier for FRA to structure tranches on an FCT by FCT basis. However, it would have made the investor due diligence efforts considerably more complex and costly, with the potential effect of lowering investor interest, and/or lowering the overall price levels to be offered. After due deliberation, FRA decided in favor of blending assets across FCTs into single tranches, in its efforts to maximize asset value realization, even though that approach implied slightly more complex internal operations. In other words, FRA made the decision ultimately in the favor of the creditors’ interests, ahead of considering its own convenience and ease of implementation.

- *Barriers Against Collusion:* FRA has established well conceived, clearly documented policies and procedures to prevent collusion among bidders and between bidders and FCT borrowers. FRA implements these policies with an appropriate bidder pre-qualification procedure, and there are significant fines and other penalties, e.g., rescinding the sale, in the case of any misconduct. The geographic and corporate diversity of bidders, locally and internationally, would make price collusion most unlikely. In addition, careful inspection of bidding patterns to date indicate no pricing collusion; while this analysis (in and of itself) is not totally conclusive, it supports conclusions reached from all other sources. While no system can be guaranteed to be perfect or absolutely "foolproof", FRA has taken all reasonable measures to implement barriers to collusion in accordance with generally accepted international standards.

Concluding Comments:

The Barents/KPMG team devoted its best efforts and put forth its professional judgement during the conduct of this Second Independent Third Party Review of the FRA. This Executive Summary (and all other materials in the Final Report, including appendix materials produced by the Barents/KPMG team) represent those same best efforts and professional judgement, based on the information and materials made available to us during the elapsed time and level of resources available to this project.

The Barents/KPMG team further declares that there were many discussions and exchanges of various viewpoints on the complex issues and detailed technical points covered during this review. However, at no time did anyone from FRA, MoF or any other party attempt to interfere with or alter the independent judgements or professional opinions of the Review team, as stated in this Final Report.

The Barents/KPMG team would like to thank FPO/Ministry of Finance for the opportunity to execute this assignment. Further, the team would like to thank all FRA senior officers and staff for their full and complete cooperation during the conduct of this Second Independent Third Party Review of the Financial Sector Restructuring Authority (FRA) of Thailand.