

Agricultural Futures Trading Act B.E. 2542 (1999)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on 9th October B.E. 2542,

Being the 54th year of the present reign.

His Majesty King Bhumibol Adulyadej graciously issued a command to announce that:

Whereas, it is expedient to have a law on agricultural futures trading; and

Whereas, this Act has provisions relating to the restriction of rights and freedom of persons which pursuant to Sections 29 together with Section 35, Section 36, Section 48, and Section 50 of the Constitution of the Kingdom of Thailand can be made possible only by virtue of law;

Therefore, on the advice and with the consent of the National Assembly His Majesty the King is pleased to enact this Act as follows:

Section 1

This Act shall be called the "Agricultural Futures Trading Act B.E. 2542 (1999)".

Section 2

This Act shall enter into force after the lapse of one hundred and eighty days from the date of its publication in the Royal Gazette.

Section 3

In this Act,

"Exchange" means the Agricultural Futures Exchange of Thailand.

"Agricultural Commodity" means an agricultural produce or product processed from an agricultural produce, which the Board of Directors of the Exchange has specified for Futures Trading.

"Futures Trading" means the purchase and sale of an Agricultural Commodity by open auction on the Exchange for taking or making delivery of the Agricultural Commodity at a later date in the agreed quantity and at the agreed price under the principles, procedures, and conditions stipulated by the Board of Directors of the Exchange.

"Futures Contract" means a buy or sell order of an Agricultural Commodity which a buyer or seller sends to and is confirmed by the Exchange as to the quantity, price, and time for taking or making delivery of the Agricultural Commodity.

"Futures Trading Business" means

- (1) Being a Futures Trader
- (2) Being a Futures Broker
- (3) Being a Futures Trading Advisor
- (4) Being a Futures Agent
- (5) Being a Futures Pool Business Operator
- (6) Engagement in other businesses concerning an Agricultural Commodity as prescribed by the AFTC.

"Futures Trader" means a person licensed by the Secretary-General to engage in Futures Trading for his own account.

"Futures Broker" means a person licensed by the Secretary-General to solicit and accept futures buy or sell orders from Customers.

"Futures Trading Advisor" means a person licensed by the Secretary-General to conduct the business of advising others desirous of trading futures on the Exchange as to Futures Trading.

"Futures Agent" means a person licensed by the Secretary-General to be a Futures Broker's agent in soliciting futures buy or sell orders from Customers.

"Futures Pool Business Operator" means a person licensed by the Secretary-General to administer and manage the Futures Pool Business.

"Futures Pool Business" means

- (1) The management of private capital by managing capital of at least five persons or more than one group of persons with the object of seeking benefit from Futures Trading;
- (2) The management of an agricultural futures fund by raising funds from persons or groups of persons with the object of seeking benefit from Futures Trading.

"Member" means a Futures Trader or Futures Broker who is authorized by the Board of Directors of the Exchange to trade futures on the Exchange.

"Customer" means a buyer or seller who engages in Futures Trading on the Exchange through a Futures Broker or Futures Agent.

"Margin" means money and property posted as security for Futures Trading.

"President" means the president of the Agricultural Futures Exchange of Thailand.

"Competent Official" means a person appointed by the Minister to act in accordance with this Act.

"Office" means the Office of the Agricultural Futures Trading Commission.

"Secretary-General" means the secretary-general of the Agricultural Futures Trading Commission.

"Minister" means the minister in charge of this Act.

Section 4

The Minister of the Ministry of Commerce shall be in charge of this Act and shall have power to issue ministerial regulations and appoint Competent Officials to act in accordance with this Act.

The ministerial regulations shall be enforceable after they have been published in the Royal Gazette.

Chapter 1

Supervision of Agricultural Futures Trading

Part 1

Agricultural Futures Trading Commission

Section 5

There shall be an Agricultural Futures Trading Commission, commonly abbreviated to "AFTC", established to comprise the Minister of the Ministry of Commerce as chairman, the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Agriculture and Co-operatives, the Permanent Secretary of the Ministry of Commerce, the

Governor of the Bank of Thailand, and five qualified persons having experience in the business of trading in agricultural commodities and appointed by the Cabinet of Ministers, as members. Of these five members, there shall be at least one qualified person from each area of law, commerce, finance, and agriculture. The Secretary-General is also a member and a secretary.

An AFTC member shall be a member of neither the Board of Directors of the Exchange nor the Appeal Committee.

Section 6

A qualified member appointed by the Cabinet of Ministers shall not be a political official, holder of political office, or official of a political party.

Section 7

The AFTC shall have power and duties to formulate policies to promote and develop and to supervise Futures Trading and businesses concerning or connected with Futures Trading and shall have power and duties as follows:

- (1) To issue rules, regulations, notifications, orders, and requirements under this Act;
- (2) to stipulate principles, procedures, and conditions for the application for and the issuance of a Futures Trading Business license;
- (3) to fix fees for the application for and the issuance of a Futures Trading Business license;
- (4) to approve the amount of subsidy and contribution which the Exchange earmarks for the Office and the Exchange Development Fund in accordance with paragraph two of Section 74;
- (5) to approve rules, regulations, notifications, and orders issued by the Board of Directors of the Exchange in accordance with Section 78 (1) (4) (5) (8) (9) (10) (11) and (16);
- (6) to stipulate principles and procedures for the Secretary-General's review and determination of a dispute under Section 116;
- (7) to suspend Futures Trading or order the Board of Directors of the Exchange or the President to do or omit to do an act under Section 125;
- (8) to order the Futures Trading Business operator or the Exchange to explain and report on and have power to order an investigation into, facts concerning Futures Trading;
- (9) to stipulate rules for the execution of duties of the sub-committee;
- (10) to stipulate rules, orders, and regulations governing employees; employment relationship system; placement, appointment, dismissal, disciplines, and punishment of employees and workers of the Office; setting of salary and compensation rates; support and welfare; and granting of power for others to act on behalf of the Secretary-General;
- (11) to do any other acts which are stipulated by law to be within the power and duties of the AFTC.

Section 8

The qualified member appointed by the Cabinet of Ministers shall hold office for a term of four years.

Within sixty days after the expiration of the term of office under paragraph one, a new qualified member shall be appointed. Pending the appointment of the new qualified member, the retiring qualified member shall continue in office until the new qualified member assumes office.

The retiring qualified member may be re-appointed but shall not hold office for more than two consecutive terms.

Section 9

Upon the lapse of two years from the appointment of the initial AFTC, three qualified members appointed by the Cabinet of Ministers shall vacate their office by drawing lots. The vacation of their office shall be regarded as retirement upon expiration of their term.

Section 10

In addition to the retirement upon expiration of his term, the qualified member appointed by the Cabinet of Ministers shall vacate his office upon:

- (1) his death;
- (2) his resignation;
- (3) removal by the Cabinet of Ministers for reason of serious neglect of duty;
- (4) being a bankrupt;
- (5) being an incompetent or *quasi-incompetent* person;
- (6) being imprisoned by a final court judgment for imprisonment, not including the case where the offense is committed by negligence or a petty one;
- (7) being disqualified under Section 6.

If a qualified member appointed by the Cabinet of Ministers vacates office before the expiration of his term, the Cabinet of Ministers may appoint a replacement-qualified member. The replacement-qualified member shall hold office for the remaining term of the vacating qualified member whom he replaces.

Section 11

The meeting of the AFTC shall be quadrate when there is no less than half of the total number of members present at the meeting.

If the chairman is not present at the meeting or unable to perform his duty, the members present at the meeting shall elect one of them to chair the meeting.

A resolution of the meeting shall be passed by a majority vote. Each member shall have one vote. In case of an equality of votes, the chairman of the meeting shall have another vote as the casting vote.

Section 12

A member who has any interest in a matter under consideration shall not participate in considering that matter.

Section 13

The AFTC shall have power to appoint a sub-committee to do any acts within the power and duties of the AFTC and report to the AFTC.

Section 11 shall apply *mutatis mutandis* to the meeting of the sub-committee under paragraph one.

Section 14

The chairman of the AFTC, members of the AFTC, and sub-committee members shall be remunerated as prescribed by the Minister and such remuneration shall be regarded as operating expenses of the Office.

Part 2

Office of the Agricultural Futures Trading Commission

Section 15

The Office of the Agricultural Futures Trading Commission shall be established and shall have the status of a legal person.

The business of the Office under paragraph one shall not be subject to the labor protection law regarding severance payment, the compensation law, and the labor relations law.

The Office is neither part of the government nor a state enterprise under the budgetary procedure law or other laws. The revenue of the Office shall not be required to be remitted as the state revenue.

Section 16

The Office shall have its head office in the Bangkok Metropolis or another province as specified by the AFTC.

Section 17

The Office shall have power and duties to act in accordance with the resolutions of the AFTC and such power and duties shall include the following:

- (1) to perform the administrative duties of the AFTC and the sub-committee;
- (2) to hold ownership or possessor rights or have in possession any properties, construct, buy, procure, sell, dispose of, rent, let, hire-purchase, lease on hire-purchase terms, borrow, lend, accept pledges, take mortgages, exchange, transfer, accept transfers, do any acts concerning properties inside or outside the Kingdom, as well as receive donated properties;
- (3) to borrow money, borrow, lend money, and invest for profit;
- (4) to fix service fees for operations of the Office;
- (5) to receive fees as the AFTC shall require;
- (6) to do other acts as stipulated by law to be within the power and duties of the Office or as the AFTC shall designate;

Provided that it is in the interests of the conduct of business of the Office.

Section 18

On the Minister's recommendation, the Cabinet of Ministers shall appoint the Secretary-General.

The Secretary-General shall hold office for a term of four years and may be re-appointed.

Section 19

The Secretary-General shall have qualifications and be clear of disqualifications as follows:

- (1) to have Thai nationality;
- (2) to have graduated with at least a bachelor's degree or its equivalent;
- (3) to have knowledge and ability concerning the Futures Trading Business and be capable of working full-time for the Office;
- (4) not to be a political official, holder of political office, official of a political party, civil servant holding regular office or receiving regular salary, or employee or worker of a governmental body or state enterprise;
- (5) not to hold office or have a duty or an interest in connection with a Futures Trading Business operator;
- (6) not to be a bankrupt;
- (7) not to be an incompetent or *quasi-incompetent* person;

- (8) not to have been imprisoned by a final court judgment for imprisonment, not including the case where the offense is committed by negligence or a petty one.

Section 20

In addition to the retirement upon expiration of his term, the Secretary-General shall vacate office upon:

- (1) his death;
- (2) his resignation;
- (3) as proposed by the AFTC, removal by the Cabinet of Ministers' resolution for reason of breach of duty stipulated under this Act or serious neglect of duty;
- (4) losing a qualification or being disqualified under Section 19.

Section 21

Within three years from the vacation of office, the Secretary-General shall not become a shareholder, director, manager, person with power to manage business, or financial advisor of a licensed Futures Trading Business operator.

Section 22

The Secretary-General shall have power and duties to issue licenses and regulate the conduct of Futures Trading Business and conduct the business of the Office in accordance with the policies and resolutions of the AFTC, including rules, regulations, notifications, or orders concerning the Office and shall have employees and workers of the Office under his command.

In the conduct of business, the Secretary-General shall be accountable to the AFTC.

Section 23

In matters concerning third parties, the Secretary-General shall be the representative of the Office. To this end, the Secretary-General may authorize any employees of the Office to do specific acts on his behalf, provided that the authorization shall be in accordance with the regulations stipulated by the AFTC.

Section 24

The Office shall establish an accounting system suitable for the business of the Office and shall regularly arrange an internal audit.

Section 25

The Office shall prepare a balance sheet and an income account to be submitted to its auditor within 120 days from the end of each fiscal year.

The normal fiscal year shall commence on 1st January and end on 31st December of every year. As for the initial year, it shall commence on the date this Act enters into force and end on 31st December of that year.

The Office of the Auditor-General of Thailand shall be the auditor of the Office every year and shall prepare its audit report to the AFTC.

Chapter 2

Futures Trading Business

Part 1

Futures Trader, Futures Broker, Futures Trading Advisor, Futures Agent and Other Business Operators

Section 26

Any person who will conduct the business of a Futures Trader, Futures Broker, Futures Trading Advisor, Futures Agent, and other businesses as specified by the AFTC shall require to be licensed by the Secretary-General.

The application for and the issuance of a license for the conduct of business under paragraph one shall be in accordance with the principles, procedures, and conditions stipulated by the AFTC.

In issuing a license, the Secretary-General may impose conditions on the conduct of business.

Section 27

In issuing a business license under Section 26, the Secretary-General shall examine evidence of an applicant in respect of the following:

- (1) Regarding the application for a license to be a Futures Trader:
 - (a) the applicant is a legal person having the object of conducting the Futures Trading Business and is financially secure;
 - (b) directors of the applicant are not disqualified under Section 35 and are financially secure;
 - (c) the applicant has employees in the number specified by the AFTC who have completed a Futures Trading training from an institution certified by the AFTC;
- (2) Regarding the application for a license to be a Futures Broker:
 - (a) the applicant is a legal person having the object of conducting the Futures Trading Business and is financially secure;
 - (b) directors of the applicant are not disqualified under Section 35 and are financially secure;
 - (c) the applicant has employees in the number specified by the AFTC who have completed a Futures Trading training from an institution certified by the AFTC;
- (3) Regarding the application for a license to be a Futures Trading Advisor:
 - (a) the applicant has experience in Futures Trading and has knowledge and ability for the study, analysis, and research of Agricultural Commodities;
 - (b) if the applicant is a legal person, it shall have personnel with qualifications under (a) and other qualifications as specified by the AFTC;
- (4) Regarding the application for a license to be a Futures Agent:
 - (a) the applicant is financially secure, has proper conduct, and is not disqualified under Section 35;
 - (b) the applicant has completed a Futures Trading training from an institution certified by the AFTC.

Section 28

When there is a need to maintain economic stability and protect the public interest, the AFTC shall have power to prescribe additional conditions, as it deems appropriate for the holder of the business licenses under Section 26 and Section 44 to comply.

When the need under paragraph one ceases or changes, the AFTC may modify or change the prescribed conditions.

Section 29

The holder of the Futures Broker license shall be regarded as also holding the Futures Trader license.

Section 30

To act as a Futures Broker, he shall make a contract in writing with the Customer for engaging in Futures Trading on behalf of the Customer. The contract shall contain details of essential provisions as prescribed by the AFTC to make it fair to the parties.

The remuneration for acting as a Futures Broker under paragraph one shall be at the rate specified by the AFTC.

Section 31

A Futures Agent may engage in soliciting futures buy or sell orders from Customers after the name of the Futures Agent has been notified to the Secretary-General in accordance with the principles, procedures, and conditions prescribed by the Secretary-General.

For the purpose of supervision of Futures Trading of the Members, the Secretary-General shall notify the Exchange of the name of the Futures Agent under paragraph one.

Section 32

The holder of the business license under Section 26 shall conduct his business in accordance with the principles, procedures, and conditions prescribed by the AFTC.

Section 33

The holder of the business license under Section 26 may have branches or move its head office, branches, or offices only with the permission of the Secretary-General.

The application and permission shall be in accordance with the principles, procedures, and conditions prescribed by the AFTC.

Section 34

The holder of the business license under Section 26 shall maintain its financial status as specified by the AFTC.

Section 35

A director, manager, or person with power to manage business, of the holder of the business license under Section 26 shall be clear of the following disqualifications:

- (1) being a bankrupt;
- (2) having ever been imprisoned by a final court judgment for imprisonment, not including the case where the offense is committed by negligence or a petty one;
- (3) unless exempted by the AFTC, having ever been a director, manager, or person with power to manage business, of a financial institution whose business license was revoked;
- (4) having ever been a director, manager, or person with power to manage business, of a Futures Trading Business operator whose business license under this Act was revoked;
- (5) unless exempted by the AFTC, having ever been removed from the post of chairman, director, or manager of any financial institution;
- (6) having ever been removed in accordance with Section 60;
- (7) being a person without the educational qualifications, working experience, or qualifications as specified by the AFTC;
- (8) being otherwise disqualified as specified by the AFTC.

Section 36

The holder of the business license under Section 26 may, only with the approval of the Secretary-General, appoint a director, manager, or person with power to manage the licensed business.

If it appears later that the person appointed under paragraph one is disqualified under Section 35, the Secretary-General has power to revoke the previous approval granted, and the holder of the business license under Section 26 shall propose a replacement person for the approval of the Secretary-General within forty-five days from the date of the revocation of the approval.

The director, manager, or person with power to manage business whose approval was revoked under paragraph two shall not, directly or indirectly, act or be involved in the Futures Trading concern where the approval for him was revoked and shall provide conveniences and facts to the replacement person.

Section 37

The holder of the business license under Section 26 shall prepare accounts to truly show the existing results of operations and financial position. The accounts shall be in compliance with the accounting standard adopted by a professional institution approved by the concerned governmental authorities and additional requirements specified by the AFTC.

Section 38

The holder of the business license under Section 26 shall prepare financial statements in accordance with the forms and methods and within the times specified by the Secretary-General.

The financial statements under paragraph one shall be audited and opined on by an auditor who shall not be a director, employee, or worker of the holder of the business license.

The auditor under paragraph two shall be a licensed auditor under the law governing auditors and shall be approved by the AFTC.

Section 39

The holder of the business license under Section 26 shall disclose his financial statements for inspection by the public at the offices of the business operator and shall provide them to the Secretary-General within the times specified by the Secretary-General.

Section 40

The auditor under Section 38 shall adhere to the ethics and carry out his audit to give an opinion on the financial statements in accordance with the requirements under the law governing auditors and additional requirements specified by the AFTC.

If the auditor finds that the holder of the business license under Section 26 has prepared documents in support of entries or disclosed information in the financial statements which is untrue or incomplete, the auditor shall disclose the fact or opinion and the material impact on the financial statements in the audit report that he will sign to give his opinion.

The AFTC shall have power to revoke its approval for the auditor who fails to comply with the provisions of paragraph one or two.

Section 41

The money a Futures Broker or Futures Agent receives from a Customer shall not be regarded as property of the Futures Broker or Futures Agent.

Section 42

A Futures Broker or Futures Agent shall deposit money received from a Customer for use in the futures purchase or sale with a commercial bank or other financial institution in accordance with the principles, procedures, and conditions prescribed by the AFTC, and shall segregate the account of each Customer from the account of the broker or agent.

Section 43

A Futures Broker shall make a payment from a Customer's account only for the purpose of the Customer's Futures Trading or to pay in accordance with the order of the Customer - owner of the account.

Part 2

Futures Pool Business

Section 44

Any person who will conduct the business of a Futures Pool Business Operator shall require to be licensed by the Secretary-General. In this regard, the AFTC may prescribe characteristics of fund management that do not require a license.

The application for and the issuance of a license to operate the business under paragraph one shall be in accordance with the principles, procedures, and conditions prescribed by the AFTC.

In issuing a license, the Secretary-General may impose conditions on the conduct of the Futures Pool Business.

The establishment and the management of a Futures Pool Business under this Part shall not be subject to the law governing securities and securities exchange.

Section 45

In issuing a license under Section 44, the Secretary-General shall examine evidence of an applicant in respect of the following:

- (1) the applicant is either a natural person or a legal person having the object of conducting the Futures Trading Business and is financially secure;
- (2) if the applicant is a natural person, a director, manager, or person with power to manage business of the applicant shall not be disqualified under Section 35;
- (3) records and manner of the past business conduct of the applicant in terms of management are not deficient or show a lack of responsibility or prudence;
- (4) expertise and skill in Futures Trading.

Section 46

To undertake to manage private capital, the Futures Pool Business Operator shall conduct the business in accordance with the principles, procedures, and conditions prescribed by the AFTC.

Section 47

Regarding the establishment and the management of an agricultural futures fund, the Futures Pool Business Operator may establish and manage the agricultural futures fund after the application for establishment of the agricultural futures fund has been approved by the Secretary-General in accordance with the principles, procedures, and conditions prescribed by the AFTC.

Section 48

In the application for establishment of an agricultural futures fund under Section 47, the Futures Pool Business Operator shall submit the following documents and evidence:

- (1) program and plan for managing the agricultural futures fund with particulars as specified by the Secretary-General;

- (2) draft commitment between investors and the Futures Pool Business Operator which shall not be of the nature that is unfair to the investors;
- (3) draft contract appointing the supervisor of the agricultural futures fund.

Section 49

The commitment between investors and the Futures Pool Business Operator under Section 48(2) shall comprise at least the following essential provisions:

- (1) power, duties, and responsibility of the Futures Pool Business Operator;
- (2) appointment of the supervisor of the agricultural futures fund, conditions of the change of the supervisor and his remuneration;
- (3) rates and methods of payment of fees and remuneration for managing the agricultural futures fund;
- (4) rights of the investors;
- (5) dissolution of the agricultural futures fund.

The commitment under paragraph one shall not contain any limitation of liability of the Futures Pool Business Operator and of the supervisor which is of the nature that is unfair to the investors.

Any provision of the commitment or any contract which is of the nature that is contrary to the provisions of paragraph two shall be void.

Section 50

The supervisor of an agricultural futures fund shall have qualifications and power and duties as specified by the AFTC.

The supervisor of an agricultural futures fund shall be entitled to bring a legal action through execution of judgment for the benefit of the investors as a whole or pursuant to the instructions of the Secretary-General when an act or an omission to act results in damage to the agricultural futures fund.

If the supervisor of an agricultural futures fund acts, omits to act, or fails to perform his duties under paragraph one, resulting in damage to the investors, the investors or the Office shall be entitled to file a complaint in accordance with the Criminal Procedure Code or bring a civil or criminal action or any other actions through execution of judgment against the supervisor of the fund for the benefit of the investors as a whole.

If a complaint is filed and the public prosecutor files a criminal case, the public prosecutor shall have power to demand property, price, or compensation for damage on behalf of the injured persons. In this regard, the provisions governing the bringing of a civil action in connection with a criminal action in accordance with the Criminal Procedure Code shall apply *mutatis mutandis*.

Expenses incurred in bringing a legal action through execution of judgment under this Section for the benefit of any agricultural futures fund shall be paid from the assets of the fund.

Section 51

Raising funds from the public or any person by solicitation or invitation for investment in the establishment of an agricultural futures fund shall be regarded as an offering of newly issued securities in the category of shares and shall be subject to the law governing securities and securities exchange with regard to the issuance of securities of a company and offering of securities to the public.

Section 52

Funds raised under any agricultural futures fund program shall be added to the assets of that agricultural futures fund. The agricultural futures fund shall be registered with the

Secretary-General in accordance with the principles and procedures prescribed by the Secretary-General.

Upon registration under paragraph one, the agricultural futures fund shall have the status of a legal person.

Section 53

Regarding management of an agricultural futures fund, the Futures Pool Business Operator shall act in accordance with the program and plan for the agricultural futures fund management as submitted to the Secretary-General under Section 48 (1).

The program and plan for the agricultural futures fund management shall be modified or added and the management procedure of the agricultural futures fund shall be modified, by the affirmative votes of the majority of the investors representing more than one half of the total capital invested. Such modification or addition shall be reported to the Secretary-General within fifteen days from the date of the resolution of the modification.

The Futures Pool Business Operator shall notify every investor of the modification of or addition to the program and plan for the agricultural futures fund management or the modification of the management procedure of the agricultural futures fund and publish it in at least one local daily newspaper within fifteen days from the date of the resolution of the modification or addition.

Section 54

Regarding management of an agricultural futures fund, the Futures Pool Business Operator shall not do the following:

- (1) commingle the assets of the agricultural futures fund with his own or those of other persons;
- (2) use assets of the agricultural futures fund to invest in a business outside the objectives of the agricultural futures fund, unless exempted by the AFTC; provided, however, that any investment in securities shall be in accordance with the principles, procedures, and conditions prescribed by the AFTC. The principles, procedures, and conditions shall be prescribed as a result of the joint consideration of the AFTC and the Securities and Exchange Commission under the law governing securities and securities exchange;
- (3) borrow money in the name of the agricultural futures fund or create any encumbrance over the assets of the agricultural futures fund outside the objectives of the agricultural futures fund, unless exempted by the AFTC;
- (4) assure the investors that there will be a certain rate of profit or promise that the loss shall not be incurred at a certain rate;
- (5) do any act which is of the nature that may cause a conflict of interest with the investors as stipulated by the AFTC;
- (6) other businesses as specified by the AFTC.

Section 55

Regarding management of an agricultural futures fund, the Futures Pool Business Operator shall have the following duties:

- (1) prepare and report on the balance sheet, income statement, and statement of changes in the assets to the investors and the Secretary-General in accordance with the principles, procedures, and times prescribed by the AFTC;
- (2) make an annual report for the investors and the Secretary-General within ninety days from the end of the fiscal year in the form prescribed by the Secretary-General;

- (3) prepare and keep accurate records of daily trading of each Agricultural Commodity in good order at the head office which shall be made available to the investors for inspection;
- (4) maintain a register of investors in accordance with the principles and procedures prescribed by the Secretary-General;
- (5) do any other acts as required by the AFTC.

Section 56

Section 37, Section 38, and Section 40 shall apply *mutatis mutandis* to the preparation of accounts to show results of operations and financial position, the preparation of financial statements, and the giving of the auditor's opinion on the financial statements as regards an agricultural futures fund.

Part 3

Suspension and Revocation of License and Dissolution of Futures Trading Business

Section 57

If the Secretary-General is of the view that a holder of the business license under Section 26:

- (1) lacks the qualifications for the conduct of business under the principles stipulated in Section 27(1)(a) and (c), (2)(a) and (c), and (3)(a) and (b);
- (2) conducts business in violation of the principles stipulated under Section 32;
- (3) fails to maintain his financial status in accordance with the principles stipulated by the AFTC under Section 34;
- (4) fails to properly prepare accounts under Section 37 or financial statements under Section 38 or fails to complete them within the stipulated times;

The Secretary-General shall have power to order such holder of the business license to rectify or comply with the stipulated principles or to comply correctly in all respects within the specified times.

Section 58

If the Secretary-General is of the view that a holder of the business license under Section 26 has a position or carry out operations in a manner that may cause damage to the public interest, the Secretary-General shall have power to order the holder of the business license to rectify his position or operations or do any other acts within the specified period and may also impose any conditions for him to comply with for the purpose of rectification of his position or operations.

Section 59

If a holder of the business license under Section 26 fails to comply with the order of the Secretary-General under Section 57 or Section 58, the Secretary-General shall have power to suspend the license of the holder until the holder complies with the order.

Section 60

If a director, manager, or person with power to manage business of a holder of the business license under Section 26 fails to comply with the order of the Secretary-General under Section 57 or Section 58, the Secretary-General shall have power to order the holder of the business license to remove such director, manager, or person with power to manage business and, subject to the approval of the Secretary-General, appoint another person who has the qualifications and is not disqualified under Section 35 to be a

replacement director, manager, or person with power to manage business within forty-five days from the date of removal.

The order of the Secretary-General under paragraph one shall be regarded as a resolution of the shareholder meeting under the Civil and Commercial Code or the public limited companies law, as the case may be.

The removed person shall not, directly or indirectly, be involved or do any act in the Futures Trading concern where he was removed and shall provide conveniences and facts to the replacement person.

Section 61

If the Secretary-General is of the view that a Futures Pool Business Operator lacks the qualifications stipulated under Section 45 or improperly prepares accounts showing results of operations and financial position or financial statements under Section 56 or fails to complete them within the specified period, the Secretary-General shall have power to order rectification or compliance with the stipulated principles or due compliance in all respects within the specified period.

If a Futures Pool Business Operator fails to comply with the order of the Secretary-General under paragraph one, the Secretary-General shall have power to suspend his license until he complies with the order.

Section 62

If the Secretary-General is of the view that a Futures Pool Business Operator acts or fails to act, causing likely damage to the Futures Pool Business, or fails to perform duties stipulated in Section 55, the Secretary-General shall have power to order the Futures Pool Business Operator to rectify the act or the omission that caused likely damage or that is the failure to perform the duties.

If a Futures Pool Business Operator fails to comply with the order of the Secretary-General under paragraph one, the Secretary-General shall have power to revoke his license and order dissolution of the Futures Pool Business.

Section 63

If a holder of the business license under Section 26 or Section 44 fails to comply with additional conditions prescribed by the AFTC under Section 28, the Secretary-General shall have power to order a suspension of the holder of the business license until he complies with the conditions prescribed by the AFTC.

Section 64

If a holder of the business license under Section 26 fails to rectify or is unable to rectify his position or operations in accordance with the order of the Secretary-General under Section 58 and the Secretary-General is of the view that the position or operations of the holder of the business license will cause serious damage to the public interest, the Secretary-General shall have power to order a revocation of the license of the holder of the business license.

Section 65

If evidence shows to the Secretary-General that a Futures Trading Business operator is or was imprisoned by a final court judgment for an offense concerning property, taxation, or a public fraud, the Secretary-General shall have power to order a revocation of the license of that operator.

Section 66

If the Secretary-General orders a suspension of the license, the Secretary-General shall have power to impose conditions for the holder whose license is suspended to comply regarding Futures Trading outstanding at the time of the suspension.

Section 67

If the Secretary-General orders a revocation of license, the person whose license is revoked shall comply with the principles, procedures, and conditions under paragraph two of Section 69.

Section 68

Regarding the suspension or revocation of license under this Part, the Secretary-General shall notify the Futures Trading Business operator in writing and shall require him to post the letter of the notification of suspension or revocation at a visible place at the offices of the Futures Trading Business operator.

The Secretary-General shall notify the Exchange of the suspension or revocation of the Futures Trader or Futures Broker license for further action.

Section 69

Any Futures Trading Business operator who will dissolve his Futures Trading Business in the category of his license shall submit to the Secretary-General an application for dissolution of the Futures Trading Business.

In order to protect the public interest or Customers or investors, the AFTC shall prescribe principles, procedures, and conditions concerning Futures Trading, price payment, and taking or making delivery of Agricultural Commodity which the Futures Trading Business operator submitting the application for business dissolution shall have satisfied before the Secretary-General may approve the business dissolution.

Section 70

An agricultural futures fund shall be dissolved for the following grounds:

- (1) expiration of the agricultural futures fund or occurrence of a case for dissolution of business as specified in the regulations of the agricultural futures fund;
- (2) the investors meeting passes a resolution to dissolve the business in accordance with the regulations of the agricultural futures fund; provided the resolution shall take effect subject to the Secretary-General's approval;
- (3) bankruptcy;
- (4) the Secretary-General orders the dissolution under paragraph two of Section 62.

The agricultural futures fund whose business is dissolved under (1) or (3) shall so notify the Secretary-General within fifteen days from the date of the occurrence of the ground for dissolution.

Section 71

The agricultural futures fund whose business is dissolved shall arrange liquidation in accordance with the principles, procedures, and conditions prescribed by the AFTC. After the liquidation is completed, the status of a legal person of the agricultural futures fund shall terminate.

Chapter 3

Agricultural Futures Exchange

Part 1

Establishment

Section 72

The Agricultural Futures Exchange of Thailand shall be established and shall have the status of a legal person. Its object is to conduct the business of the Exchange by acting as the center for Futures Trading and, subject to the AFTC's approval, other businesses beneficial to or connected with the business of the Exchange.

The businesses of the Exchange under paragraph one shall not be subject to the labor protection law regarding severance payment, the compensation law, and the labor relation law.

The Exchange is neither part of the government nor a state enterprise under the budgetary procedure law or other laws. The revenue of the Exchange shall not be required to be remitted as the state revenue.

Section 73

The Exchange shall have power within its objects under Section 72 and such power shall include the following:

- (1) to procure, hold ownership, hold any property rights, possess, rent or let, hire-purchase or lease on hire-purchase terms, transfer or accept transfers of leasehold or hire-purchase rights, mortgage or take mortgages, and sell or otherwise dispose of movable or immovable property;
- (2) to set the Futures Trading system and procedure;
- (3) to conduct the business of the Clearinghouse and manage the Exchange Development Fund;
- (4) to conduct the business of providing information services in connection with Futures Trading and similar businesses;
- (5) to borrow money, borrow, lend money, and invest for profit;
- (6) to do any other acts concerning or connected to the fulfillment of the objects of the Exchange.

Section 74

The Exchange shall have power to use money and property it receives from its operations for its fixed expenses, remit them as subsidy to the Office and as contribution to the Exchange Development Fund, and use them for the development of the Exchange.

The subsidy to the Office and the contribution to the Exchange Development Fund shall be in accordance with the AFTC's approval.

Section 75

No person other than the Exchange established under this Act shall engage in the business of the Exchange or any business having the same characteristics or nature.

Section 76

No person other than the Exchange shall use the term "Agricultural Futures Exchange" or any other words having the same import as a name in or word identifying his business.

Part 2

Board of Directors of the Agricultural Futures Exchange

Section 77

There shall be a Board of Directors of the Agricultural Futures Exchange, commonly abbreviated to the "Board of Directors of the Exchange", established to comprise five

persons appointed by the AFTC and other five persons elected by the members, as directors. The President shall be an *ex officio* director.

The persons appointed by the AFTC under paragraph one shall have knowledge and ability in the area of law, commerce, finance, agriculture, or the Futures Trading Business.

The Board of Directors of the Exchange shall elect an Exchange director other than the President to be the chairman and shall appoint an employee of the Exchange to be the secretary.

A director of the Exchange shall be a member of neither the AFTC nor the Appeal Committee.

Section 78

The Board of Directors of the Exchange shall have power and duties to supervise the operation of the Exchange and do other acts as stipulated in this Act.

The power and duties of the Board of Directors of the Exchange under paragraph one shall include the issuance of rules, regulations, notifications, or orders in the following matters:

- (1) principles for the prescription, alteration, modification, or cancellation of Agricultural Commodity;
- (2) principles, procedures, and conditions concerning the purchase or sale of Agricultural Commodity and the taking and making delivery of Agricultural Commodity;
- (3) principles, procedures, and conditions concerning certification of a warehouse to be a place for taking or making delivery of Agricultural Commodity traded on the Exchange;
- (4) principles, procedures, and conditions concerning deposit or maintenance of Margin, Margin account adjustment, and Margin rates;
- (5) principles, procedures, and conditions concerning deposit or holding of money or securities of the Members;
- (6) daily price limits in the daily Futures Trading of Agricultural Commodity;
- (7) trading volume of each Agricultural Commodity of the Members or the Customers;
- (8) principles, procedures, and conditions concerning a temporary suspension of trading on the Exchange of any category or kind of Agricultural Commodity;
- (9) principles, procedures, and conditions concerning election of directors of the Exchange;
- (10) principles and procedures concerning payment of contribution and management of the Exchange Development Fund;
- (11) principles, procedures, and conditions concerning becoming a Member of the Exchange, qualifications, number, rights and duties, punishment, and meeting of Members, including transfer and loss of membership;
- (12) rates of membership admission fees, charges, membership fees, and service charges payable by the Members to the Exchange;
- (13) trading hours and holidays for Futures Trading;
- (14) principles, procedures, and conditions concerning entry to inspect documents and books and accounts of the Members;
- (15) principles and procedures for placement, appointment, dismissal, disciplines and punishment of employees and workers of the Exchange, position, salary schedule, wages and other compensation, complaint, support and welfare,

rules and practical guidelines of the Exchange, and granting of power for others to act on behalf of the President;

- (16) any other acts necessary for carrying out operations in accordance with the objects of the Exchange.

The prescription, alteration, or modification of rules, regulations, notifications, or orders under (1) (4) (5) (8) (9) (10) (11) and (16) shall be enforceable after the AFTC has given its approval.

Section 79

The director of the Exchange elected by the Members shall be clear of the following disqualifications:

- (1) being a bankrupt;
- (2) being an incompetent or *quasi-incompetent* person;
- (3) having been imprisoned by a final court judgment for imprisonment, not including the case where the offense is committed by negligence or a petty one;
- (4) not being a political official, holder of political office, civil servant holding regular office or receiving regular salary, official of a political party, or employee or worker of a governmental body or state enterprise;
- (5) vacating office on account of the AFTC's removal resolution for reason of breach of duty stipulated under this Act or serious neglect of duty.

Section 80

Section 6, Section 8, Section 9, Section 10, Section 11, and Section 12 shall apply *mutatis mutandis* to the appointment, term of office, retirement, vacation of office, appointment of a director replacing a vacating director, meeting, and prohibition from participation in the consideration of the directors of the Exchange.

Section 81

The Board of Directors of the Exchange shall appoint the President and fix his salary and other remunerations.

The President shall hold office for a term of four years and may be re-appointed.

Section 82

The President shall:

- (1) not be disqualified under Section 79;
- (2) have knowledge and ability concerning the Futures Trading Business and be capable of working full-time for the Exchange.

Section 83

In addition to the retirement upon expiration of his term, the President shall vacate office upon:

- (1) his death;
- (2) his resignation;
- (3) the passing of the removal resolution of the Board of Directors of the Exchange;
- (4) being disqualified under Section 79.

The resolution of the Board of Directors of the Exchange removing the President from office under (3) shall be passed by the affirmative votes of no less than three-fourths of the total number of directors of the Exchange excluding the President.

Section 84

The President shall have the duty to manage the business of the Exchange in accordance with rules, regulations, notifications, orders, or resolutions of the Board of Directors of the Exchange and shall have employees and workers of the Exchange under his command.

As regards management of the business, the President shall be accountable to the Board of Directors of the Exchange.

Section 85

In matters concerning third parties, the President shall be the representative of the Exchange. To this end, the President may authorize any employees of the Exchange to do specific acts on his behalf, provided that the authorization shall be in accordance with the rules or regulations stipulated by the Board of Directors of the Exchange.

Section 86

When the post of the President becomes vacant or the President is unable to perform his duties, the Board of Directors of the Exchange shall appoint a director or employee of the Exchange to act as the President on a temporary basis. To this end, the person shall have power and duties of the President, except for the power and duties of the President in the capacity of a director of the Exchange.

Section 87

The Board of Directors of the Exchange has power to appoint a sub-committee to do any acts within the power and duties of the Board of Directors of the Exchange and report to the Board of Directors of the Exchange.

Section 11 shall apply *mutatis mutandis* to the meeting of the sub-committee under paragraph one.

Section 88

The chairman of the Board of Directors of the Exchange, directors of the Exchange, and sub-committee members shall be remunerated as prescribed by the AFTC and such remuneration shall be regarded as operating expenses of the Exchange.

Part 3 Clearinghouse

Section 89

A Clearinghouse shall be established in the Exchange and shall have the following duties:

- (1) be a center for clearing of trading accounts, Margin account adjustment according to the value of Future Trading, taking or making delivery of Agricultural Commodity, and preparation of Futures Trading reports;
- (2) collect and hold Margins, money, or securities the Members post with the Clearinghouse;
- (3) promote and oversee the financial integrity of the Futures Trading system;
- (4) do any other acts necessary for carrying out the operations of the Clearinghouse.

Section 90

Regarding the performance of duties of the Clearinghouse, the Clearinghouse shall take responsibility for trading between Members by becoming the buyer to every Member seller and the seller to every Member buyer.

Section 91

For the sake of integrity of the clearing of trading accounts, a Member shall post money or securities with the Clearinghouse in accordance with the principles, procedures, conditions, and time prescribed by the Board of Directors of the Exchange and approved by the AFTC.

Section 92

If a Member causes damage to the Futures Trading and the Margin posted under Section 101 is insufficient to pay for damage, the Exchange shall have power to use money or securities posted under Section 91 to pay for the damage.

Section 93

If a Member's money or securities posted under Section 91 are insufficient to pay for damage caused under Section 92, the Exchange shall have power to use the money from of the Exchange Development Fund to pay for damage based on the remaining indebtedness, in accordance with the principles and procedures prescribed by the Board of Directors of the Exchange and approved by the AFTC.

Part 4

Exchange Development Fund

Section 94

A fund called "Exchange Development Fund" shall be established in the Exchange to have the object of promoting financial stability of the Exchange, giving the Members and the Customers confidence, and developing Futures Trading.

Section 95

The Exchange Development Fund under Section 94 consists of:

- (1) money contributed by the Exchange and the Members in accordance with the principles and procedures prescribed by the Board of Directors of the Exchange under Section 78(1) and approved by the AFTC;
- (2) donated money or property;
- (3) fruits of money in the Fund;
- (4) other revenues.

Section 96

Payments made from the Exchange Development Fund under Section 94 shall be in accordance with the principles, procedures, and conditions prescribed by the Board of Directors of the Exchange and approved by the AFTC and shall be made only in the following cases:

- (1) for advances when a Member causes damage to the Futures Trading or when the money or securities posted under Section 91 are insufficient to pay for damage;
- (2) for expenses incurred in managing the Fund;
- (3) for expenses incurred in collecting debts and taking legal action through execution of judgment;
- (4) for expenses incurred in the study and research for the development of Futures Trading.

Section 97

The money of the Exchange Development Fund under Section 94 shall be used to obtain fruits by means of making deposits in commercial banks or other financial institutions or making investment as approved by the Board of Directors of the Exchange.

Section 98

When it is deemed appropriate to promote the business of the Exchange, the Ministry of Commerce may request a budget to subsidize the Exchange.

Chapter 4

Operation of the Exchange

Part 1

Futures Trading of Members and Operation

Section 99

In conducting Futures Trading on the Exchange, the Members shall comply with the principles, procedures, and conditions prescribed by the Board of Directors of the Exchange and approved by the AFTC.

Section 100

The Agricultural Commodity that will be eligible for Futures Trading on the Exchange shall be as specified by the Board of Directors of the Exchange.

The specification of the Agricultural Commodity under paragraph one shall have at least details concerning type, kind, quality, quantity, and time and place for taking and making delivery of the Agricultural Commodity.

Section 101

For each futures purchase or sale of Agricultural Commodity on the Exchange, a Margin shall be posted with the Clearinghouse at the rate and in accordance with the procedures prescribed by the Board of Directors of the Exchange and approved by the AFTC.

Section 102

At the end of each trading day, the Clearinghouse shall clear trading accounts and adjust accounts of Margin put up with the Clearinghouse in accordance with the principles and procedures prescribed by the Board of Directors of the Exchange.

Section 103

Futures Trading shall be conducted only during the business hours of the Exchange.

Section 104

If there are reasonable grounds for believing that the Futures Trading is in a condition that may cause damage to the operations of the Exchange and the Clearinghouse, the Board of Directors of the Exchange shall have power to:

- (1) temporarily suspend the Futures Trading of Agricultural Commodity of any category or kind on the Exchange for a specified period as it deems appropriate;
- (2) temporarily prohibit a Member from buying or selling Agricultural Commodity on the Exchange for a specified period as it deems appropriate;

- (3) dispose of or revoke a Futures Contract in accordance with the principles, procedures, and conditions prescribed by the Board of Directors of the Exchange under Section 78 (2);
- (4) order a Member to do or omit to do any acts as necessary, and may also impose any time periods or conditions for the Members to comply.

The Board of Directors of the Exchange may grant the above power to the President for him to act on their behalf.

Section 105

If the AFTC is of the view that the Futures Trading of Agricultural Commodity of any category or kind may cause damage to the national economy or the public interest and the Board of Directors of the Exchange has not exercised its power under Section 104, the AFTC has power, if it is the case of urgent need requiring an immediate action, to issue an order under Section 104.

Section 106

If a Member or Member's Customer is sued in a bankruptcy case and the court has issued a receivership order, or is a judgment debtor in a civil case, the Board of Directors of the Exchange shall have power to:

- (1) assign to other Members for further action the Futures Contracts and Margin accounts of the Member's Customer who is subject to the receivership order of the court or becomes the judgment debtor in the civil case;
- (2) order a disposal or revocation of the Futures Contracts of the Member or the Customer who is subject to the receivership order of the court or becomes the judgment debtor in the civil case.

A Margin, money, or securities posted by a Member with the Exchange or a Margin of a Customer who is subject to the receivership order of the court or becomes the judgment debtor in a civil case shall not be regarded as assets to be distributable among the creditors of the Member or the Customer in the bankruptcy case and shall not be subject to seizure or garnishment in the civil case before the fulfillment of the order of the Board of Directors of the Exchange under paragraph one. In this connection, the Board of Directors of the Exchange shall have power to specify the expenses in the amounts it deems appropriate for the Members who accept to take action under paragraph one.

Section 107

If there is a malfunction in connection with the equipment used in the futures trading system which prevents the normal trading of futures or any other event specified by the Board of Directors of the Exchange, the President shall have power to order a temporary suspension of all of the Agricultural Commodity trading, and shall immediately submit a detailed report to the AFTC and the Board of Directors of the Exchange.

Part 2

Preparation and Audit of Accounts

Section 108

The Board of Directors of the Exchange shall prepare accounts to truly show existing results of operations and financial position and the financial statements in accordance with the accounting standard adopted by a professional institution approved by the relevant governmental authorities and shall report on such accounts and financial statements to the meeting of the Members of the Exchange and the AFTC every three months and within one month from the lapse of each three months' period

The AFTC shall have power to prescribe additional principles, procedures, and conditions for the preparation of the accounts and financial statements under paragraph one, as it deems appropriate.

The accounts and financial statements under paragraph one shall be audited and certified by an auditor every six months.

Section 109

The meeting of Members of the Exchange shall appoint an auditor from the persons nominated by the Board of Directors of the Exchange. The appointed auditor shall receive remuneration as determined by the meeting of Members of the Exchange.

The auditor under paragraph one shall be licensed under the law-governing auditors and shall not be the Exchange's director, President, employee, or worker.

Section 110 The auditor shall have power to examine books, accounts, documents, and evidence of the Exchange and to request explanation from the Exchange's director, President, employee, or worker.

Section 111

A Member shall submit to the Board of Directors of the Exchange copies of accounts showing results of operations and financial position and the financial statements prepared under Section 37 and Section 38 for the Board of the Directors of the Exchange to use in supervising the Member's Futures Trading.

For the purposes of supervision of a Member's Futures Trading, the Board of Directors of the Exchange shall have power to require the Member to provide additional reports or documents and evidence if the Board of Directors of the Exchange is of the view that the copies of accounts and financial statements submitted by the Member under paragraph one require information for further examination, or to order the Member, its director, manager, or person with power to manage business to submit reports or documents periodically or from time to time, as well as to provide explanation or clarification to ramify such reports or documents, subject to the principles and within the times prescribed by the Board of Directors of the Exchange.

A Member shall prepare true and complete reports and documents for submission under paragraph one.

Section 112

The Exchange or any person authorized by the Board of Directors of the Exchange shall have power to disclose information of a Member of the Exchange to the public for the protection of benefit or interest of the public, subject to the principles, procedures, and conditions prescribed by the Board of Directors of the Exchange.

Section 113

The Exchange shall disseminate to the public every six months accounts showing results of operations and financial position and financial statements certified as correct by the auditor.

Part 3

Determination of Dispute

Section 114

If a dispute arises from or in connection with Futures Trading between Members or between a Member and a Customer, the disputing parties may file an application to the Office or the Exchange for determination of the dispute by the Secretary-General or arbitration, as the case may be.

The determination of the Secretary-General or the arbitration shall be final.

Section 115

The application under Section 114 shall be in the form specified by the Secretary-General and shall at least contain the following details:

- (1) name and address of the disputing parties;
- (2) issues in dispute;
- (3) relevant documents and evidence.

Section 116

The review and determination of dispute of the Secretary-General shall be in accordance with the principles and procedures prescribed by the AFTC.

Section 117

If the disputing parties request the determination of dispute by arbitration, the arbitration tribunal shall comprise a person appointed by the Board of Directors of the Exchange as chairman and other persons each of whom shall be appointed by each disputing party from the list of arbitrators registered with the Board of Directors of the Exchange.

The law governing arbitration shall apply *mutatis mutandis* to the review and determination of dispute by arbitration under paragraph one.

Chapter 5 Supervision

Section 118

A Futures Trading Business operator shall not:

- (1) conduct a futures purchase or sale off the Exchange, or act as a broker or agent for a futures purchase or sale off the Exchange, unless permitted by the AFTC;
- (2) buy or sell an Agricultural Commodity for a Customer without a buy or sell order from the Customer;
- (3) accept a buy or sell order for an Agricultural Commodity from a Customer outside the offices of the Futures Trading Business operator, unless otherwise stipulated by the AFTC;
- (4) advertise the Futures Trading Business operator's business, unless the advertisement is made in accordance with the principles, procedures, and conditions prescribed by the Secretary-General.

Section 119

No person shall, directly or indirectly, make a futures trade or offer to make a futures trade, or do any acts involving Futures Trading to such a likely extent that another person understands that the traded Agricultural Commodity has a rising, falling, stable, or fluctuating price which is in conflict with the normal market conditions.

For purposes of this Section, the Board of Directors of the Exchange shall have power to prescribe principles as bases for determination of the normal market conditions.

Section 120

No person shall, directly or indirectly, make a futures trade or offer to make a futures trade, or do any acts involving Futures Trading in such a way likely to be an act to take advantage of others by using facts concerning Futures Trading which have not been disclosed to the public and he knows by virtue of his office or performance of duty in such Futures Trading or he knows because he receives them from the aforementioned

regardless of whether the foregoing acts are done for the benefits of himself or others, or by disclosing, in consideration of benefit, the foregoing facts for others to act.

Section 121

No person shall do any act to the extent that is likely to mislead another person to believe that there is a large volume of futures purchase or sale of Agricultural Commodity of any category or kind or that the price of the Agricultural Commodity of such category or kind has changed or has not changed, which belief is in conflict with the normal market conditions.

Section 122

No person shall impart or disseminate any false statement concerning an Agricultural Commodity or Futures Trading of an Agricultural Commodity of any category or kind or impart or disseminate any other statement that may cause others to be mistaken in the material respect concerning Futures Trading of an Agricultural Commodity of any category or kind and such act is likely to result in the price of such Agricultural Commodity to be inconsistent with the normal market conditions or likely to cause another person to engage in Futures Trading.

As regards the act under paragraph one, if the person who has imparted or disseminated such a statement did not do the act with intent to make a false statement or conceal the facts, but did do so without care that can reasonably be found according to nature or circumstances or did do so by ignoring to ascertain the truth of such statement, the person shall also be liable under paragraph one.

Section 123

No person shall assure or forecast for another person concerning an Agricultural Commodity or Futures Trading of an Agricultural Commodity of any category or kind if such assurance or forecast is false or may cause a mistake in the material respect and such act is likely to cause such person to engage in Futures Trading.

As regards the act under paragraph one, if the person who has assured or forecast did so without intent to make a false statement or conceal the facts, but did do so without care that can reasonably be found according to nature or circumstances or did do so by ignoring to ascertain the truth of such statement, the person shall also be liable under paragraph one.

Section 124

No person shall act as a Futures Agent or a branch office of a Futures Trading Business operator, unless he is the one whose name has been notified under Section 31 or receives a permission of the Secretary-General under Section 33.

Section 125

In order to prevent damage that may occur to the national economy or the public interest, the AFTC shall have power to:

- (1) temporarily suspend all Futures Trading on the Exchange for a specified period as it deems appropriate;
- (2) order the Board of Directors of the Exchange or the President to do or omit to do any acts as it deems appropriate.

To act under (1), the AFTC shall issue an order in writing and post it at a visible place at the offices of the Exchange.

Section 126

Regarding Futures Trading where a Member makes a buy or sell order at a given time, if a question arises as to whether the Member made the buy or sell order for its own account or for the account of his Customer or which Customer for whom he made the buy or sell order, the order of precedence shall be as follows:

- (1) the Customer who first sent the buy or sell order shall take precedence in receiving benefit;
- (2) the Member's trade for the account of his Customer shall take precedence over the trade for his own account.

Chapter 6

Appeal Committee

Section 127

There shall be an Appeal Committee comprising not fewer than five but not more than seven qualified members appointed by the AFTC, among whom there shall be at least one each from those who have knowledge and ability in law, commerce, or finance or have high experience in Futures Trading Business, and the Director-General of The Department of Internal Trade shall be a member and a secretary.

A member of the Appeal Committee may not be a member of the AFTC or the Board of Directors of the Exchange.

Section 128

Section 6, Section 8, Section 10, Section 11, Section 12, and Section 14 shall apply *mutatis mutandis* to the appointment, term of office, vacation of office, appointment of a member replacing a vacating member, meeting, prohibition from participation in consideration, and remuneration of the members of the Appeal Committee.

Section 129

A Futures Trading Business operator, Member, or person affected by an order issued under this Act who does not agree with the order of the Secretary-General under Section 33, Section 36, Section 59, paragraph two of Section 61, paragraph two of Section 62, Section 63, Section 64, and Section 65 or the determination or order of the Board of Directors of the Exchange under Section 104 (1), (1), and (3) may appeal to the Appeal Committee in accordance with the principles and procedures prescribed by the Appeal Committee within fifteen days from the date of knowing the order of the Secretary-General or the determination or order of the Board of Directors of the Exchange, as the case may be.

The appeal under paragraph one shall not be a ground for a stay of the execution of the order of the Secretary-General or the determination or order of the Board of Directors of the Exchange, unless otherwise resolved by three-fourths of all the members of the Appeal Committee.

The decision of the Appeal Committee shall be final.

Chapter 7

Competent Official

Section 130

In the exercise of duties, the Competent Official shall have power to:

- (1) enter the business premises or offices of the Exchange or a holder of the Futures Trading Business license or a place where information of a holder of the Futures Trading Business license is stored or processed between sunrise and sunset or during the office hours of the foregoing places in order to examine the business, assets, and liabilities of such persons and collect relevant documents, evidence, or information;

- (2) for the purpose of examination or taking legal action, search any place if there are reasonable grounds for suspecting that an offense under this Act is committed and seize or garnish documents or evidence involved in the commission of the offense under this Act;
- (3) order directors, employees, workers, and auditor of the Exchange and a holder of the Futures Trading Business license or any other concerned persons to give a statement or submit other documents or evidence concerning the operations, assets, and liabilities of the Futures Trading Business operator and the foregoing persons.

After the entry and the start of examination under (1) or (2), if the process has not been completed, the Competent Official may continue with the process at night or beyond the office hours of such places.

The use of power by the Competent Official under (1), (2), and (3) shall be made against the person who is directly involved in the matter under examination and shall require the prior approval of the Secretary-General. As regards (3), the Competent Official shall specify a reasonable period of time for such persons to comply with the order.

In the exercise of duties under (1), the Competent Official shall not act in the nature of a threat or search under the Criminal Procedure Code and shall issue a written notice to the owner or occupant of the places not less than three business days in advance. As regards (2), if there are reasonable grounds for believing that by the time a search warrant will be obtained, such documents or evidence will be removed, hidden, destroyed, or changed from its original condition, the Competent Official shall carry out the search and seizure or garnishment of the documents or evidence involved in the commission of the offense without a search warrant.

Section 131

In the exercise of duties of the Competent Official, the persons involved shall provide reasonable conveniences.

Section 132

In the exercise of duties, the Competent Official shall show his identification card to the persons involved.

The identification card of the Competent Official shall be in the form specified in ministerial regulations.

Section 133

In the exercise of duties under this Act, each of the Secretary-General and the Competent Official shall be a competent official under the Penal Code.

Section 134

If there is reasonable evidence for believing that the person having committed an offense under this Act in the nature of causing likely damage to the public interest would remove or dispose of his property, the Office shall have power to order, subject to the approval of the AFTC, a seizure or garnishment of such person's property or property, if there is evidence for believing, that belongs to such person, for a period of not exceeding one hundred and eighty days, except when an action is brought against such person in the court having jurisdiction to try civil cases. In the exception case, the seizure or garnishment order shall continue to be effective until the court orders otherwise. If there is a need preventing the bringing of an action within one hundred and eighty days, the court having jurisdiction may extend the period pursuant to the Office's request but for not more than another one hundred and eighty days.

After the Office has ordered a seizure or garnishment of the property under paragraph one, the Competent Official shall carry out the seizure or garnishment of such property.

The seizure or garnishment of the property under paragraph one shall be carried out in accordance with the principles, procedures, and conditions prescribed in ministerial regulations, and the Civil Procedure Code shall be applied *mutatis mutandis*.

If there are reasonable grounds for suspecting that the offender under paragraph one will run away from the Kingdom, the Criminal Court shall, upon the Office's request, have power to temporarily prohibit such person from leaving the Kingdom for not more than fifteen days until the Criminal Court orders otherwise.

Chapter 8

Penal Provisions

Section 135

Any person who violates Section 26 shall be liable to imprisonment for not more than three years and a fine of not more than three hundred thousand Baht, and a further fine of not more than ten thousand Baht for each day the violation continues.

Section 136

Any Futures Trading Business operator who violates or fails to comply with Section 30, Section 31, Section 42, Section 43, Section 46, Section 52, Section 53, Section 54, Section 104(4), Section 111, or Section 118 shall be liable to a fine of not more than three hundred thousand Baht and a further fine of not more than ten thousand Baht for each day the violation or failure continues.

If the commission of the offense under paragraph one results from the giving of instructions or the failure to give instructions for the doing of an act or the omission to do an act which is the duty to be exercised by the director, manager, or any person with power to manage business of a Futures Trading Business operator, such director, manager, or person with power to manage business shall be liable to imprisonment for not more than one year or a fine of not more than one hundred thousand Baht, or both.

Section 137

Any Futures Trading Business operator who violates or fails to comply with Section 32, Section 33, Section 36, Section 37, Section 38, Section 55, or Section 56 shall be liable to a fine of not more than three hundred thousand Baht and a further fine of not more than ten thousand Baht for each day the violation or failure continues.

Section 138

Any person who violates Section 21 shall be liable to imprisonment for not more than six months or a fine of not more than fifty thousand Baht, or both.

Section 139

Any supervisor who does an act or fails to do an act which is the duty to be exercised under Section 50 shall be liable to a fine of not more than three hundred thousand Baht and a further fine of not more than ten thousand Baht for each day the violation or failure continues.

Section 140

Any person who violates Section 44 or Section 75 shall be liable to imprisonment for not more than five years and a fine of not more than five hundred thousand Baht and a further fine of not more than ten thousand Baht for each day the violation continues.

Section 141

Any person who violates Section 76 shall be liable to imprisonment for not more than one year and a fine of not more than one hundred thousand Baht and a further fine of not more than three thousand Baht for each day the violation continues.

Section 142

Any person who violates paragraph one of Section 119, or Section 120 shall be liable to imprisonment for at least six months but not more than five years and a fine of not more than two times of the benefits which such person received or should have received as a result of such violation, provided such fine shall not be less than five hundred thousand Baht.

Section 143

Any person who violates Section 121, paragraph one of Section 122, or paragraph one of Section 123 shall be liable to imprisonment for not more than three years or a fine of not more than three hundred thousand Baht, or both.

Section 144

Any person who violates paragraph two of Section 122 or paragraph two of Section 123 shall be liable to imprisonment for not more than one year or a fine of not more than one hundred thousand Baht, or both.

Section 145

Any person who makes a false statement or report to the Competent Official, thereby causes or may cause damage to another person or to the public shall be liable to imprisonment for not more than six months and a fine of not more than fifty thousand Baht.

Section 146

Any person who obstructs or fails to comply with an order of the Competent Official who exercises his duty under Section 130 shall be liable to imprisonment for not more than one year and a fine of not more than one hundred thousand Baht.

Section 147

Any person who fails to provide conveniences to the Competent Official under Section 131 shall be liable to imprisonment for not more than one month or a fine of not more than ten thousand Baht, or both.

Section 148

Any person who removes, damages, destroys, or renders useless any seal or mark which the Competent Official has affixed or marked on any object in the exercise of his duties under Section 130 or Section 134 to evidence the seizure, garnishment, or retention of such thing shall be liable to imprisonment for not more than three years and a fine of not more than three hundred thousand Baht.

Section 149

Any person who damages, destroys, conceals, takes away, disposes of, or renders useless any property or documents which the Competent Official has seized, garnished, retained, or ordered delivery thereof for the benefit of evidence under Section 130, regardless of whether the Competent Official has retained such property or documents himself or ordered such person or others to deliver or retain them, shall be liable to imprisonment for not more than three years and a fine of not more than three hundred thousand Baht.

Section 150

Any auditor of a Futures Trading Business operator, Member, or the Exchange who certifies a balance sheet or any other account which is untrue or makes a false report shall be liable to imprisonment for at least three months but not more than three years or a fine of at least thirty thousand Baht but not more than three hundred thousand Baht, or both.

Section 151

Any director, manager, or person with power to manage business of a Futures Trading Business operator who does or allows any person to do any of the following acts:

- (1) damage, destroy, alter, cut out, or forge an account, document, or security of or concerning the operator;
- (2) enter a false statement or fail to enter any material statement in an account or document of or concerning the operator; or
- (3) prepare an account which is incomplete, incorrect, not up-to-date, or untrue;

If the act is done or allowed to be done in order to deceive the operator or its shareholders to not have enough of their rightful interest or to deceive any person, shall be liable to imprisonment for at least six months but not more than seven years and a fine of at least fifty thousand Baht but not more than seven hundred thousand Baht.

Section 152

An employee, worker, or agent of a Futures Trading Business operator who dishonestly deceives a Customer by making a false statement to the Customer or concealing facts which should be revealed to the Customer, and thereby obtains property from the deceived Customer or from a third person or causes the Customer or a third person to make, revoke, or destroy a document of title, shall be liable to imprisonment for at least six months but not more than seven years and a fine of at least fifty thousand Baht but not more than seven hundred thousand Baht.

Section 153

A director, manager, or person with power to manage business of a Futures Trading Business operator entrusted with the management of property of the operator or property of which the operator is a co-owner who dishonestly breaches his duty in any respect and thereby causes damage in the nature of property of the operator shall be liable to imprisonment for at least six months but not more than seven years and a fine of at least fifty thousand Baht but not more than seven hundred thousand Baht.

Section 154

A director, manager, or person with power to manage business of a Futures Trading Business operator who possesses property of the operator or property of which the operator is a co-owner and dishonestly misappropriates it for himself or a third party shall be liable to imprisonment for at least six months but not more than seven years and a fine of at least fifty thousand Baht but not more than seven hundred thousand Baht.

Section 155

Any director, manager, or person with power to manage business of a Futures Trading Business operator who takes away, damages, destroys, causes depreciation in value, or renders useless a property which the operator has the duty to look after or which is in the possession of the operator, if the foregoing act is done in order to cause damage to another person, shall be liable to imprisonment for not more than five years and a fine of not more than five hundred thousand Baht.

Section 156

Any director, manager, or person with power to manage business of a Futures Trading Business operator who does an act or omits to do an act in order to seek unlawful benefit for himself or another person and thereby causes damage to the operator shall be liable to imprisonment for at least six months but not more than seven years and a fine of at least fifty thousand Baht but not more than seven hundred thousand Baht.

Section 157

Any person who causes a director, manager, or person with power to manage business of a Futures Trading Business operator, or an auditor to commit an offense as provided in Section 150, Section 151, Section 152, Section 153, Section 154, Section 155, or Section 156 whether by instruction, order, threat, hiring, or otherwise shall be liable to the penalties as provided in such Section.

Section 158

Any person who does any act of assistance or facilitation for a director, manager, or person with power to manage business of a Futures Trading Business operator, or an auditor to commit an offense as provided in Section 150, Section 151, Section 152, Section 153, Section 154, Section 155, or Section 156 whether before or at the time of commission of the offense, shall be liable to the penalties as provided in such Section, unless the person is not aware of such assistance or facilitation.

Section 159

Any person who, in the exercise of power and duties provided in this Act, has knowledge of the business of a Futures Trading Business operator which, in the normal course of action, should not be disclosed and uses the knowledge to seek his personal benefit or discloses it to another person, thereby causes likely damage to a Customer, the Futures Trading Business operator, or the Exchange shall be liable to imprisonment for not more than one year or a fine of not more than one hundred thousand Baht, or both.

The provisions of paragraph one shall not apply to the disclosure in the following cases:

- (1) disclosure in the exercise of duties;
- (2) disclosure for the benefit of investigation or trial;
- (3) disclosure concerning the commission of offenses under this Act;
- (4) disclosure for the purpose of rectifying the position or operations of a Futures Trading Business operator;
- (5) disclosure to an auditor of a Futures Trading Business operator under this Act;
- (6) disclosure to the authority, the Exchange, or the bodies specified by the AFTC;
- (7) disclosure with approval of such person in writing.

Section 160

A settlement committee appointed by the Minister shall have power to make a determination for a case settlement as regards any offense under this Act, which is punishable by a fine only, a fine or imprisonment for not more than one year, or a fine and imprisonment for not more than one year.

The settlement committee appointed by the Minister under paragraph one shall comprise three persons, one of whom shall be an investigating officer under the Criminal Procedure Code.

If the settlement committee has made the determination for a case settlement and the alleged offender has paid the fine as determined by the settlement committee within the period of time specified by the settlement committee, the case shall be settled.

Transitional Provisions

Section 161

The Ministry of Commerce shall receive a subsidy from the state budget, the Farmers Assistance Fund, and the International Trade Promotion Fund for the Office to use as expenses in and for the establishment of the Exchange and to contribute to the Exchange Development Fund.

Section 162

Section 19 (4) shall not be applicable to the holding of office of the Secretary-General within two years from the date this Act enters into force.

Section 163

Within two years from the date this Act enters into force, the Board of Directors of the Exchange shall consist of eleven directors appointed by the AFTC and the AFTC shall appoint one of them to act as the President during that time.

Section 164

Any person engaging in the business of the Exchange or any business having the same characteristics or nature as of the date this Act enters into force shall discontinue such business within sixty days from the date this Act enters into force, and during that time Section 75 shall not be applicable to such person.

Section 165

Any person using the term "Agricultural Futures Exchange" or any other words having the same import as a name in or word identifying his business as of the date this Act enters into force shall discontinue such use within sixty days from the date this Act enters into force, and within that time Section 76 shall not be applicable to such person.

Countersigned by Mr. Chuan Leekpai as Prime Minister

Remarks:- The reasons for the promulgation of this Act are: because of the instability of agricultural commodity prices causing risks to farmers, operators of agricultural commodity processing plants, and exporters; because of the inability of the present agricultural commodity market to solve the foregoing problems; as a long-term solution to the instability of agricultural commodity prices and for the development of more efficient agricultural commodity futures trading in Thailand, it is deemed fit to establish an agricultural futures exchange to provide opportunity for farmers, operators of agricultural commodity processing plants, and exporters to conduct agricultural commodity futures trading on an exchange having definite futures trading rules, regulations, and measures conducive to fairness and protection of the public, customers and economic stability, which will lessen risk of volatility of agricultural commodity prices in the future and enable production and trading plans consistent with the market demand and thus a futures trading law is expedient; this Act was enacted.

Disclaimer

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