

Management of Partnership Stakes and Shares of Ministers Act, B.E. 2543 (2000)

Translation

BHUMIBHOL ADULYADEJ, REX.

Given on the 1st Day of July B.E. 2543;

Being the 55th Year of the Present Reign.

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on management of partnership stakes and shares of Ministers;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 48 and Section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act is called the "Management of Partnership Stakes and Shares of Ministers Act, B.E. 2543 (2000)".

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

In this Act:

"Minister" means the Prime Minister or an individual Minister in the Council of Ministers;

"juristic person" means a juristic person entrusted by the Minister to manage partnership stakes or shares of Ministers under this Act;

"NCCC" means the National Counter Corruption Commission.

Section 4

A Minister shall not be a partner or a shareholder in a partnership or company or remain as a partner or shareholder in a partnership or company, except in the following cases:

- (1) in a limited partnership, a Minister may be a limited liability partner in an amount not exceeding five percent of the total capital in such partnership;
- (2) in a limited company or public limited company, a Minister may be a shareholder in an amount not exceeding five percent of the total amount of issued shares in such company;

Section 5

In the case where a Minister wishes to receive benefits as a partner or shareholder in a partnership or company in an amount, which exceeds the prescription in Section 4, the Minister shall proceed as follows:

- (1) notify the President of the National Counter Corruption Commission in writing within thirty days as from the date of appointment as a Minister; and
- (2) transfer the partnership stakes or shares in such partnership or company to a juristic person within ninety days as from the date of notification to the President of the National Counter Corruption Commission, and upon completion of such transfer of partnership stakes or shares to the juristic person, the Minister shall notify the President of the National Counter Corruption Commission in writing within ten days as from the date of such transfer of partnership stakes or shares.

Section 6

A juristic person to whom a Minister may transfer partnership stakes or shares for management under this Act shall be a juristic person having the powers to manage personal funds under the law on securities and securities exchange or a juristic person which manages assets for the benefit of others as provided by law upon the approval of the NCCC.

Section 7

A juristic person to whom a Minister may transfer partnership stakes or shares for management shall be a juristic person which does not have directors or officers entrusted by such juristic person to act as managers in the administration and management of partnership stakes or shares of Ministers while having benefits or interests with the Minister, spouse of the Minister or a creditor or debtor of the Minister.

Section 8

In the transfer of partnership stakes or shares of Ministers to a juristic person under this Act, the Minister shall transfer the ownership of partnership stakes or shares to the juristic person absolutely, but the management or procurement of benefits relating to the partnership stakes or shares of Ministers, shall be in accordance with the conditions of contract for management of the Minister's partnership stakes or shares.

In a transfer of partnership stakes or shares, which are subject to a charge existing on the date of transfer, such transfer shall not prejudice the rights of creditors of such obligation, and the creditor of the obligation may not object to such transfer.

Section 9

A contract for management of partnership stakes or shares of a Minister shall be drawn up in accordance with the form prescribed by a Notification of the NCCC which shall at least include details on the following matters:

- (1) details relating to the partnership stakes or shares of Ministers that are transferred to the juristic person;
- (2) details on the method of transfer or disposal of partnership stakes or shares, methods of management of partnership stakes or shares and procurement of benefits in the transferred partnership stakes or shares, the characteristics of which shall not prescribe a framework for the management or procurement of benefits in such manner as to enable the Minister to exercise control of the management or procurement of benefits;
- (3) remuneration and method for payment of remuneration, if any;
- (4) liabilities and limitations to liabilities arising from the management of partnership stakes or shares;
- (5) payment of benefits arising from the management of partnership stakes or shares;
- (6) method for return of transferred partnership stakes or shares and benefits arising from the management of partnership stakes or shares.

In the prescription of a contractual form for the management of partnership stakes and shares of Ministers, the NCCC may prescribe conditions or limits on the scope of oral agreements, which a Minister and juristic person may rightfully enter into.

Entry into an agreement otherwise than under the contractual terms of management of partnership stakes and shares of Ministers pursuant to the form prescribed by the NCCC shall be prohibited.

Section 10

Upon the completion of a transfer of partnership stakes or shares to the juristic person by the Minister, the juristic person shall report the receipt of transferred partnership stakes or shares as well as forward a copy of the contract for management of partnership stakes or shares of Ministers to the NCCC within ten days as from the date of contractual execution. In this event, the NCCC shall proceed with the disclosure of such copy of contract to the public in such manner as it considers appropriate without delay.

Section 11

A Minister is prohibited from committing any act, which has the characteristics of exercising control, or issuing an order relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares.

Section 12

A juristic person is prohibited from giving consent or proceeding by any means for the purpose conferring the Minister with an opportunity to administer, control or issue orders relating to the management of partnership stakes or shares or procurement of benefits from the partnership stakes or shares, or disclose to any person in such manner as to inform the Minister of the administration or management of partnership stakes or shares received from such Minister, except where the disclosure is in accordance with the law or a report of operations in accordance with the conditions prescribed by the NCCC.

Section 13

A juristic person shall prepare a separate account from the operational accounts of the juristic person, which shows the management of partnership stakes or shares received from a Minister and benefits received from the management of such partnership stakes or shares.

Partnership stakes or shares received by the juristic person from a Minister and benefits received from the management of such partnership stakes or shares are not properties of the juristic person which creditors of the juristic person can seize or attach for the enforcement of debts in both civil and insolvency proceedings, except where the creditors of the juristic person have the right to enforce an obligation attached to the partnership stakes or shares or benefits directly arising from such partnership stakes or shares.

The provisions in paragraph two shall apply mutatis mutandis to the dissolution of the juristic person.

Section 14

In the receipt and management of partnership stakes or shares of Ministers under this Act, the juristic person receiving such partnership stakes or shares shall be exempt from the provisions of any law which prohibit the juristic person from becoming a partner or shareholder in other partnerships or companies or where there is a limit on the amount of funds for the management of properties belonging to others.

In the case where there is a law limiting the amount of partnership stakes or shares of juristic persons in other partnerships or companies, the amount of partnership stakes or shares received from the Minister including the benefits arising from the partnership or shares shall not be accounted with the amount of partnership stakes or shares which the juristic person is entitled in other partnerships or companies.

Section 15

In the case where a juristic person who received partnership stakes or shares from a Minister dissolves or becomes insolvent, once the Minister receives the return of partnership stakes or shares and benefits arising from the management of partnership stakes or shares, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the Minister shall notify such intention to the President of the National Counter Corruption Commission within thirty days as from the date of receipt of such returned partnership stakes or shares and proceed to transfer such partnership stakes or shares to another juristic person in accordance with the provisions of this Act.

In the case where the Minister receives additional partnership stakes or shares during the term of office as a Minister, and such partnership stakes or shares exceed the amount prescribed in Section 4, if the Minister still wishes to continue receiving benefits from such partnership stakes or shares, the provisions in paragraph one shall apply mutatis mutandis.

Section 16

Any juristic person not complying with Section 10 or Section 13 paragraphs one shall be liable to a fine not exceeding three hundred thousand Baht.

Section 17

Any Minister who violates Section 11 or any juristic person who violates Section 12 shall be liable to imprisonment for a term from one year to ten years or a fine from one hundred thousand Baht to one million Baht, or both.

Section 18

In the case where a juristic person commits an offence under this Act, the directors, managers or persons responsible for the operations of such juristic person shall be deemed as joint offenders with the juristic person unless it can be proven that such act of the juristic person was committed without his knowledge or consent.

Section 19

A Minister holding office on the date at which this Act comes into force shall proceed to secure compliance with this Act within one hundred and twenty days as from the date at which this Act comes into force.

Section 20

The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by
Mr. Chuan Leekpai
Prime Minister

Note: The reasons for promulgating this Act are as follows

Whereas Section 209 of the Constitution of the Kingdom of Thailand states that a Minister shall not be a partner or shareholder of a partnership or a company or retain his or her being a partner or shareholder of a partnership or a company up to the limit as provided by law; in the case where any Minister intends to continue to receive benefits in such cases, such Minister shall inform the President of the National Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his or her shares in the partnership or company to a juristic person which manages assets for the benefits of other persons as provided by law; in this connection, such Minister is prohibited from committing any act which has the characteristics of exercising any administration or management relating to the shares or business of such partnership or company. It is therefore necessary to enact this Act.

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