

Organic Act on the Election Commission, B.E. 2541 (1998)

Translation

BHUMIBHOL ADULYADEJ, REX.

Given on the 6th Day of June B.E. 2541;

Being the 53rd Year of the Present Reign

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

Whereas it is expedient to have an organic law on the Election Commission;

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

Section 1

This Organic Act is called the "Organic Act on the Election Commission, B.E. 2541 (1998)".

Section 2

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

Section 3

The Election Commission Act, B.E. 2540 (1997) shall be repealed.

Section 4

In this Organic Act:

"election" means an election of a member of the House of Representatives, a senator, a member of a local assembly or a local administrator, as the case may be;

"Changwat" includes Bangkok Metropolitan Administration;

"Secretary-General" means the Secretary-General of the Election Commission;

"Deputy Secretary-General" means the Deputy Secretary-General of the Election Commission.

Section 5

The Chairman of the Election Commission shall have charge and control of the execution of this Organic Act.

CHAPTER I

The Election Commission

Section 6

The Election Commission under this Organic Act shall be the Election Commission having the composition, qualifications and prohibitions, selection and election procedures, term of office and vacation of office of its members in accordance with the provisions of the Constitution.

Section 7

An Election Commissioners shall have the duty to submit an account showing particulars of assets and liabilities of himself or herself and of his or her spouse and children who have not become *sui juris* to the National Counter Corruption Commission within thirty days as from the date of taking and vacating office, and to re-submit the account within thirty days as from the date of expiration of one year after vacation of office.

The account under paragraph one shall be submitted together with the supporting documents which are the copies of the documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. The declarer must certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof.

Section 8

At a sitting of the Election Commission, the present of not less than four-fifths of the total number of the existing Election Commissioners is required to constitute a quorum. In the case where any Election Commissioner was unable to attend the meeting, such cause shall be noted in the minute of that sitting.

A resolution of a meeting of the Election Commission shall be made by a majority of votes, in casting of votes, each Election Commissioner shall have one vote.

In case of equal votes, the presiding member shall have an additional vote as a casting vote. However, the resolution of the Election Commission in performing functions under Section 10 (5), (6), (7) and (8) shall be made by a unanimous vote.

The Chairman of the Election Commission shall preside over the meeting. When the Chairman of the Election Commission is absent from a meeting, the Election Commissioners shall elect one among themselves to preside over such meeting.

Section 9

In the case where there is no Chairman of the Election Commission or the Chairman is unable to perform his or her duties, the Election Commissioners shall elect one among themselves to act as the Chairman of the Election Commission.

Section 10

The Election Commission shall have the power and duties as follows:

- (1) to control and cause to be held or hold an election and a voting at a referendum as provided by law to be in an honest and fair manner;
- (2) to issue notifications determining all activities necessary for the execution of the organic law on the election of members of the House of the Representatives and senators, the organic law on political parties, the organic law on referendum and the law on the election of members of local assemblies or local administrators;
- (3) to give orders instructing government officials, officers or employees of a government agency, State agency, State enterprise or local government or other State officials to perform all necessary acts under the organic law on the election of members of the House of the Representatives and senators, the organic law on political parties, the organic law on referendum, and the law on the election of members of local assemblies or local administrators;
- (4) to issue rules as a guideline in the performance of duties of a person who is appointed to have the power and duty with respect to the election or the voting at a referendum;
- (5) to determine a constituency for an election on a constituency basis and to provide a roll of voters;
- (6) to conduct an investigation and inquiry for fact-finding and decision on arising problems or disputes under the organic law on the election of members of the House of Representatives and senators, the organic law on political parties, the organic law on referendum or the law on the election of members of local assemblies or local administrators;
- (7) to order a new election or a new voting at a referendum to be held in any or all polling stations or to order a new vote-counting when there is a convincing evidence that the election or the voting at a referendum in that or those polling stations have not proceeded in an honest and fair manner, in accordance with the rules and procedure prescribed by the Election Commission;
- (8) to announce the result of an election or a voting at a referendum;

- (9) to provide, or co-ordinate with any State agency, local government, State enterprise or other State agencies, or to support a private organization to provide education to the people on the democratic regime of government with the King as Head of the State;
- (10) to prepare an annual report and remarks for submitting to the National Assembly;
- (11) to perform other activities as provided by this Organic Act, other organic laws or other laws, to be the power and duties of the Election Commission.

Section 11

The Election Commission shall have the power to appoint an Election Commission of Changwat, an election director of Changwat, a person, a group of persons or representatives of private organizations to perform duties as entrusted by the Election Commission.

The rules and procedure for an appointment, term of office, vacation of office and an allowance as well as the performance of duties of an Election Commission of Changwat, an election director of Changwat, a person, a group of persons or representatives of private organizations under paragraph one and a subcommittee under Section 14 shall be prescribed by the Election Commission.

Section 12

An Election commission of Changwat under Section 11 in each Changwat shall consist of not exceeding eleven members appointed by the Election Commission from persons who have qualifications and are not under prohibitions under Section 137 (1), (2), (4), (5), (6) and (7) of the Constitution and mainly from persons who have that Changwat as their domicile.

A member of the Election Commission of Changwat shall serve for only one term.

Section 13

The Election Commission may entrust an Election Commission of Changwat to perform the following duties:

- (1) to hold an election and a referendum in that Changwat;
- (2) to suggest a division of constituencies for an election on a constituency basis to the Election Commission;
- (3) to collect and inspect data relating to the number of voters at an election or voters at a referendum;
- (4) to suggest the Election Commission to consider appointing a person to exercise power and duties with respect to the election or the referendum as provided by the organic law on the election of members of the House of Representatives and senators, the organic law on referendum or the law on the election of members of local assemblies or local administrators;
- (5) to perform other activities with respect to the election or the referendum.

Rules and procedure on the performance of duties of an Election Commission of Changwat shall be prescribed by the Election Commission.

Section 14

In the performance of duties under this Organic Act, the Election Commission may appoint a sub-committee to perform such duties which the Election Commission may entrust.

Section 15

In performing duties with respect to an election or a referendum, the Election Commission shall have the power to give an order instructing government agencies, local governments, State enterprises or other State agencies to carry out any matter under their authorities, or instructing those agencies to order officials, officers or employees or other State officials, to perform any necessary act with respect to the election or the referendum.

The government official, officer or employee of a State agency having the duty to comply with the order of the Election Commission given under paragraph one or Section 10 (3) who

fails to comply with such order without reasonable cause shall be deemed to breach a discipline and the Election Commission shall submit the case to a person who has authority to try a discipline offence to proceed with the case.

Section 16

In the case where there appears to the Election Commission that a person commits an offence under the organic law on the election of members of the House of Representatives and senators, the organic law on political parties, the organic law on referendum, the law on the election of members of local assemblies or local administrators, the Election Commission shall have the power to notify an inquiry official to conduct an inquiry and shall have the power to file the case with the court irrespectively that it is a civil, criminal or administrative case. In this regard, it shall be deemed that the Election Commission is an injured person under the Criminal Procedure Code.

In performing the duty under paragraph one, the Election Commission may entrust any government official to act on its behalf and the inquiry official, the public prosecutor or the court shall facilitate a convenient and speedy trial, provided in this case that all court fees are exempted.

Section 17

The Election Commission shall prepare a voter roll of each Changwat from the house registers under the law on the household registration.

Any interested person shall have the right to inspect the voter roll under paragraph one and may apply for the correction thereof.

Section 18

The Election Commission shall divide constituencies for the election on a constituency basis in every Changwat for an advanced acknowledgement to the public.

The constituencies under paragraph one shall be divided under the condition that the boundary of each constituency shall be adjoining and the number of inhabitants in each constituency must be closely apportioned under the criteria as follows:

- (1) in the case of any Amphur or Tambon having enough inhabitants to constitute a constituency, such Amphur or Tambon shall be regarded as a constituency;
- (2) in the case where the condition of the inhabitants is not conform to that under (1), it shall combine areas of other Amphur as a constituency regarding the adjacency of the areas, convenience of transportation and the fact that they used to be in the same constituency. If the combining of Amphur results in excessive or insufficient number of inhabitants, it shall separate or combine areas of any Tambon until number of inhabitants sufficient to constitute a constituency but it shall not separate or combine only a part of Tambon;
- (3) in the case where the determination of area under the criteria in (2) causes a number of inhabitants in each constituency not closely apportioned or the inhabitants not in the same community, it shall divide a constituency according to the locality that the inhabitants communicate with each other regularly as the same or close community with convenient transportation. A number of inhabitants of each community in each constituency shall be closely apportioned as much as possible.

When the division of constituencies has already been made, the Election Commission shall publish such division in the Government Gazette. A change of constituency shall be made only to combine constituencies or add a new constituency under the criteria under paragraph two.

In the case of a general election, the Election Commission shall notify the division of constituencies for that general election according to the division of constituencies published under this Section except in the case of necessary to change a constituency under paragraph three.

Section 19

In the case where there is a cause for the Election Commission to conduct investigation and inquiry for fact finding and decision on arising problems or disputes relating to the execution of the organic law on the election of members of the House of Representatives and senators, the organic law on political parties, the organic law on referendum or the law on the election of members of local assemblies or local administrators in accordance with the provisions of the Constitution, the Election Commission shall forthwith proceed with the matter.

In the investigation and inquiry under paragraph one, the Election Commission shall give a chance to a petitioner, an objected person or an accused person to give the fact in writing and to adduce the evidence, including a chance to give statements to the Election Commission.

The decision of the Election Commission shall be in writing and affix the signature of every commissioner who passes the decision.

The procedure of investigation and inquiry and making a decision shall be in accordance with the rules prescribed by the Election Commission and published in the Government Gazette.

Section 20

Any private organization wishing to assist in the performance of functions of the Election Commission on inspecting an election shall submit an application to the Election Commission. When the Election Commission has reviewed and is of the opinion that the private organization is nonpartisan, the Election Commission shall have the power to certify such private organization to assist in the inspection of an election.

In each election, the Election Commission shall have the power to appoint a representative or representatives of the certified private organization or organizations under paragraph one to inspect an election and to report to the Election Commission if it is found that the election proceeding was in a dishonest or unfair manner or contrary to laws.

The rules and procedure for an application for a certification, certification, revocation of certification and the performance of duties of a private organization shall be in accordance with the rules prescribed by the Election Commission and published in the Government Gazette.

Section 21

In performing duties under this Organic Act, the Election Commission shall have the following powers:

- (1) to request government agency, State agency, State enterprise or local government to give fact in writing or give an opinion in the performance of duties or submit any document, evidence or other evidence concerned for consideration;
- (2) to request an official of the agencies under (1), State official, public prosecutor, inquiry official or any person to give fact in writing or give a statement or submit any document, exhibitions or other evidence concerned for consideration;
- (3) to request the court to submit any document, testimony or other evidence concerned for consideration;
- (4) to enter any polling place, place for voting at a referendum or place for counting of votes for election or referendum.

Section 22

In performing duties under this Organic Act, an Election Commissioner, member of an Election Commission of Changwat, an election director of Changwat and member of a sub-committee appointed by the Election Commission shall be regarded as officials under the Penal Code.

Section 23

Salaries, emoluments and other benefits of the Chairman of the Election Commission and the Election Commissioners shall be in accordance with the law concerned.

Section 24

No Election Commissioner, member of an Election Commission of Changwat, neither election director of Changwat nor member of a subcommittee appointed by the Election Commission shall exercise his or her function wrongfully to be advantageous or disadvantageous to any candidate or political party, or commit or omit to commit any act dishonestly or wrongfully in the performance of duties.

In the case where the person under paragraph one performed the duties in good faith, he or she shall be protected from being liable to civil and criminal liabilities.

CHAPTER II

The Office of the Election Commission

Section 25

There shall be the Office of the Election Commission to be a State agency which is a juristic person and be under the supervision of the Election Commission with the Chairman of the Election Commission as the highest superior.

The affairs of the Office of the Election Commission shall not be subject to the law on labor protection, law on labor relations, law on social security and law on workmen's compensation.

Section 26

The Office of the Election Commission shall have the duties to be responsible for the general affairs of the Election Commission and the Registrar of political parties and shall have the following powers and duties:

- (1) to be responsible for the administrative works of the Office of the Election Commission and the Registrar of political parties and to carry out the study and to compile various data concerning the works of the Election Commission and the Registrar of political parties;
- (2) to study and encourage the making of a research concerning an election, a referendum and the development of political parties;
- (3) to disseminate and provide knowledge and education relating to a democratic regime of government with the King as Head of the State to the public;
- (4) to receive a petition concerning the performance of duties of an official who has the powers and duties relating to an election or a referendum, the keeping of order in an election, or violation of law concerning an election or the corruption or dishonesty act in an election of a candidate, voter, political party or any other person, for submitting to the Election Commission;
- (5) to carry out any other work as entrusted by the Election Commission.

Section 27

In the supervision of the Office of the Election Commission, the Election Commission shall have the power to issue regulations or notifications relating to personnel administration, budget, finance and properties and other matters as follows:

- (1) the organization of the departments within the Office of the Election Commission and the scope of duties of such departments;
- (2) the designation of position, salary scales and other remuneration of the Secretary-General, Deputy Secretary-General, officers and employees of the Office of the Election Commission;
- (3) the selection, recruitment, appointment, removal from office, discipline and disciplinary punishment, termination of office, petition and appeal against punishment of the Secretary-General, Deputy Secretary-General and officers of

- the Office of the Election Commission, including the procedure and conditions for employ of employees of the Office of the Election Commission;
- (4) the selection, prescription of wages or remuneration as well as special premium to a government official, officer or employee who carries out the duties temporarily as an officer or employee of the Office of the Election Commission under Section 32;
 - (5) the administration and management of finance and properties of the Office of the Election Commission;
 - (6) the provision of welfare or other support to the Secretary-General, Deputy Secretary-General, officers and employees of the Office of the Election Commission.

Section 28

The Office of the Election Commission shall have a Secretary-General, appointed by the Chairman of the Election Commission with the approval of the Election Commission, to be the superior official of officers and employees of the Office of the Election Commission and shall be responsible directly to the Chairman of the Election Commission on the affairs of the Office of the Election Commission. There may be a Deputy Secretary-General to assist the Secretary-General in the performance of official duties.

The Secretary-General shall be the secretary of the Election Commission.

Section 29

The Secretary-General must be reputed as a person of integrity, be of Thai nationality by birth, not be exceeding sixty-five years of age, and have qualifications, experience and success in administration as prescribed by the Election Commission.

The Secretary-General shall hold office for a term of five years as from the day of the appointment and may be re-appointed but not more than two consecutive terms.

Section 30

The Secretary-General shall have the duties to control and generally supervise works of the Office of the Election Commission to be in accordance with the laws, regulations, notifications and resolutions of the Election Commission and shall have the following powers:

- (1) to recruit, appoint, remove, promote, reduce salary or wages of, and discipline an officer or employee as well as to dismiss an officer or employee of the Office of the Election Commission;
- (2) to issue regulations concerning the performance of duties of an officer or employee of the Office of the Election Commission and a government official, officer or employee who performs duties temporarily as an officer or employee of the Office of the Election Commission under Section 32;
- (3) to issue regulations concerning the performance of duties of the Office of the Election Commission.

Provided that they shall be in accordance with the rules and conditions prescribed by the Election Commission and insofar as they are not contrary to the rules or notifications or resolutions of the Election Commission.

Section 31

In an affair of the Office of the Election Commission relating to an outsider, the Secretary-General shall be the representative of the Office of the Election Commission. For this purpose, the Secretary-General may authorize any person to conduct any specific act on his or her behalf; provided that, it shall be in accordance with the rules prescribed by the Election Commission and published in the Government Gazette.

Section 32

The Election Commission may request a government official, officer or employee of a State agency, local government, State enterprise or other State agency to perform duties

temporarily as an officer or employee of the Office of the Election Commission; subject to the approval of his or her superior or employer, as the case may be.

Any government official, government officer or employee who has been approved to perform duties as an officer or employee of the Office of the Election Commission under paragraph one shall be deemed to be permitted to release from government service or release to conduct other work and it shall count the time pending the performance in the Office of the Election Commission for calculating pension or other similar benefits as if such person is in the government service or works full time, as the case may be.

Section 33

In the case where the government official, government officer or employee under Section 32 requests to return to government service or resume the previous office within the approved period of time, such person shall have the right to be assigned and appointed to hold office and receive the monthly salary determined in the arrangement approved under Section 32.

Section 34

The Office of the Election Commission shall submit budgetary appropriations according to the resolution of the Election Commission to the Council of Ministers for allocation as subsidy for the Election Commission and the Office of the Election Commission in the bill on annual appropriations for the fiscal year or the bill on supplementary appropriations, as the case may be.

In the case where there are expenses in an election or the holding of a referendum in excess of the budget received by the Office of the Election Commission, the State shall provide more subsidy sufficiently to the work of the Office of the Election Commission.

Section 35

Incomes and properties for the operation of the Office of the Election Commission shall consist of:

- (1) subsidies under Section 34;
- (2) incomes from fees and fruits of money or incomes from properties of the Office of the Election Commission;
- (3) other incomes as provided by laws.

Section 36

Incomes of the Office of the Election Commission shall not be incomes remitted to the Ministry of Finance according to the law on treasury balance, the law on budgetary procedure or other laws.

Immovable properties which the Office of the Election Commission acquired by incomes of the Office of the Election Commission shall be under the ownership of the Office of the Election Commission.

The Office of the Election Commission shall have the powers to possess, supervise and maintain properties of the Office of the Election Commission.

Section 37

Properties of the Office of the Election Commission shall be properties of the State and shall not be subject to judicial execution.

Section 38

The Office of the Election Commission shall prepare a balance-sheet, finance account and working account and submit them to an auditor within ninety days after the end of accounting year.

The Office of the Auditor-General of Thailand shall be an auditor of the Office of the Election Commission and shall examine and certify all accounts and finance of the Office of the Election Commission as well as evaluate the result of expenses and properties of the Office of the Election Commission and give an opinion whether such expenses are according to the purpose, economy and fulfill the objectives and then submit an auditing report to the National Assembly and the Council of Ministers without delay.

Section 39

For the benefit of considering the annual report made by the Election Commission under Section 10 (10), the House of Representatives or the Senate may pass a resolution requiring the Election Commission or the Office of the Election Commission to explain in writing or give oral statement, or submit the documents relating to the consideration of the annual report of the Election Commission or any performance of the Election Commission or the Office of the Election Commission and may make a remark on the performance of duties thereof if appropriate.

CHAPTER III Penalties

Section 40

Any person who obstructs the performance of duties of the Election Commission, Election Commissioner, an Election Commission of Changwat, a member of an Election Commission of Changwat, an election director of Changwat, sub-committee or a member of a sub-committee appointed by the Election Commission to perform duties under this Organic Act, shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht, or to both.

If the obstruction under paragraph one is committed by doing an act of violence or threatening to do an act of violence, the offender shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding forty thousand Baht, or to both.

Section 41

Any person who violates or fails to comply with Section 21 (2) shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both.

Section 42

Any Election Commissioner, member of an Election Commission of Changwat, election director of Changwat, or member of a subcommittee appointed by the Election Commission who violates Section 24 shall be liable to imprisonment for a term of one to ten years and to a fine of twenty thousand to two hundred thousand Baht, and the court shall order the disfranchisement for a period of ten years.

Transitory Provisions

Section 43

To comply with Section 327 (9) of the Constitution, the Election Commission shall submit the draft law on election of members of local assemblies or local administrators to the Council of Ministers for further submit to the House of Representatives within one year as from the day this Organic Act comes into force; provided that, such law shall prescribe the period of time to repeal all of the laws relating to election of members of local assemblies or local administrators in force at the time of the enactment of the new law on election of members of local assemblies or local administrators, and the prescribed period of time may differ depending upon the readiness of each election of a local assembly or local administrators of which the Election Commission may control and hold or cause to be held but not later than five years as from the day this Organic Act comes into force.

Section 44

The Election Commission shall determine the constituencies for an election on a constituency basis under Section 18 within ninety days as from the day this Organic Act comes into force.

In the case where there is an election before the notification of the constituencies under paragraph one, the Election Commission shall have the power to issue a notification

determining the constituencies for such particular election and the provisions of Section 18 shall apply *mutatis mutandis*.

Section 45

Within two years as from the day this Organic Act comes into force, when the Election Commission requests, a government agency, local government, State enterprise or other State agency shall allow their government officials, officers or employees to perform the duties temporarily in the Office of the Election Commission by receiving the salary from the original attached office but being under the supervision of the Chairman of the Election Commission.

The performance of duties of the government officials, officers or employees in the Office of the Election Commission under paragraph one shall be deemed the performance of official duties.

Section 46

In the initial period, before the Office of the Election Commission shall receive budgetary appropriations for the fiscal year, the Election Commission shall prepare an operating plan and a plan on the establishment and administration of the Office of the Election Commission submitted to the Council of Ministers for granting subsidy for the expenses of operation and administration according to such plans.

The Council of Ministers shall consider allocating the budgetary appropriations as general subsidy for the expenses of operation according to the plans submitted by the Election Commission as necessary.

Section 47

The Chairman of the Election Commission and the Election Commissioner who holds office on the day this Organic Act comes into force shall submit accounts showing particulars of assets and liabilities of themselves and of their spouses and children who have not become *sui juris* including documents under Section 7 to the National Counter Corruption Commission within thirty days as from the day this Organic Act comes into force.

Countersigned by
Mr. Chuan Leekpai
Prime Minister

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