

Public Debt Management Act, B.E. 2548 (2005)

Translation

BHUMIBHOL ADULYADEJ, REX;
Given on the 31st Day of January B.E. 2548;
Being the 60th 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 public debt management;

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 "Public Debt Management Act, B.E. 2548 (2005)".

Section 2

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

Section 3

The following shall be repealed:

- (1) Treasury Bill Act, B.E. 2487 (1944);
- (2) Act Determining the Ministry of Finance to Guarantee Loan, B.E. 2510 (1967), Notification of the Revolutionary Council No. 110 dated 31st March B.E. 2515 (1972), Act Determining the Ministry of Finance to Guarantee Loan (No. 2), B.E. 2519 (1976), Notification of the Revolutionary Council No. 17 dated 8th November B.E. 2520 (1977);
- (3) Loan for National Defense Act, B.E. 2519 (1976);
- (4) Act Authorizing the Ministry of Finance to Raise Loan from Abroad, B.E. 2519 (1976);
- (5) Act Authorizing the Ministry of Finance to Raise Loan from Foreign Government to Purchase Military Equipment, B.E. 2524 (1981);
- (6) Emergency Decree Authorizing the Ministry of Finance to Restructure External Debt, B.E. 2528 (1985);
- (7) Emergency Decree Authorizing the Ministry of Finance to Raise Loan from Abroad for Economic Rehabilitation, B.E. 2541 (1998).

Section 4

In this Act:

"Public debt" means any debt incurred by the Ministry of Finance, State agency or State enterprise through the raising or guaranteeing of loan by the Ministry of Finance, but not include debt incurred by State enterprise which undertakes money lending business and such debt is not guaranteed by the Ministry of Finance;

"Public debt management" means an incurring of debt through the raising or guaranteeing of loan, debt repaying, debt restructuring and any act related to public debt;

"Guarantee" includes aval of bill;

"Debt instrument" means a treasury bill, promissory note, bond and any instrument which may incur debt as specified by the Committee, including debt instrument issued in scripless form;

"Treasury bill" means a document incurring short term debt issued by the Ministry of Finance which its maturity is less than twelve months as from the date of issuance;

"Promissory note" means a promissory note under the Civil and Commercial Code;

"Bond" means a document incurring long term debt which its maturity is longer than twelve months as from the date of issuance;

"State agency" means a Ministry, Sub-Ministry, Department or other government agency called by other name and ascribed the status as a Department, government agency attached to the National Assembly, Court and other State agencies, but not includes local government organization and State enterprise;

"Agency under State supervision" means a State agency other than a government agency and State enterprise;

"Local government organization" means a Provincial Organization, Municipality, *Tambon* Organization, Bangkok Metropolitan Administration, Pattaya City, and other local government organizations established by law;

"State enterprise" means:

- (a) a government organization under the law on establishment of government organization, State undertaking established by law, or business entity owned by government;
- (b) a limited company or public company limited which more than fifty per cent of its capital owned by a State agency or State enterprise under (a);
- (c) a limited company or public company limited which more than fifty per cent of its capital owned by a State agency, State enterprise under (a) or (b) or State agency and State enterprise under (a) and (b). For this purpose, the percentage of capital shall be calculated upon capital owned by State agency;

"State financial institution" means a financial institution established by law so as to lend money for promoting agriculture, commerce or industry;

"Committee" means the Public Debt Policy and Supervision Committee;

"Office" means the Public Debt Management Office;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 5

The Minister of Finance shall have charge and control for the execution of this Act and shall have the power to issue Ministerial Regulation, notification and regulation for the execution of this Act.

Such Ministerial Regulation shall come into force upon its publication in the Government Gazette.

CHAPTER I General Provisions

Section 6

Public debt management shall be in accordance with the provisions of this Act.

Section 7

The Ministry of Finance shall, with approval of the Council of Ministers, have the exclusive power to raise or guarantee loan in the name of the Government of the Kingdom of Thailand.

Section 8

A State agency other than the Ministry of Finance may not raise or guarantee loan, provided that authorization is made by law.

Section 9

If there is necessary to a State enterprise which is not a juristic person to raise loan for the carrying out of its undertaking, the Ministry in which such State enterprise is attached, with approval of the Council of Ministers, shall have the power to raise loan for such State enterprise. If the raising of loan is for investment purpose, the State enterprise shall submit its investment plan to the National Economic and Social Development Board for prior approval. If the amount of loan to be raised is more than fifty million Baht, the raising of such loan shall also be approved by the Council of Ministers.

Money raised under the loan under this Section shall be spent by such State enterprise in accordance with the purpose of loan raising without having to remit to the Ministry of Finance under the law on budgetary procedure and the law on treasury balance.

Section 10

The raising of loan under this Act shall be made by concluding loan agreement, issuing debt instrument or by other means as approved by the Council of Ministers.

In raising of loan under paragraph one, the Ministry of Finance shall not raise loan from or through any person other than the direct lending institution, except where there is the raising of loan by issuing debt instrument. In this case, the Ministry of Finance may sell debt instrument through underwriter.

The raising of loan by issuing debt instrument shall be made within an amount, period and procedure as notified by the Minister.

Section 11

In issuing debt instrument in the country, the Minister may entrust the Bank of Thailand or other person to be underwriter.

Subject to the provisions of paragraph one, the issuance, buy, sale and transfer of debt instrument, the use of debt instrument as security, with or without delivery, and enforcement of security, and the appointment of underwriter shall be in accordance with form, rule, procedure and condition specified in the Ministerial Regulation. In this regards, the provisions on pledge under the Civil and Commercial Code shall not apply thereto, provided that otherwise specified in the Ministerial Regulation.

Section 12

The Minister or person authorized by the Minister shall have the power to sign loan agreement, letter or agreement of guarantee or debt instrument. The authorization to sign debt instrument shall be published in the Government Gazette.

Section 13

The principal, interest and all expenses incurred in the raising of loan and the issuance and management of debt instrument shall be paid from budget as set out in the annual budgetary appropriation. If such instrument is the treasury bill or the authorization is prescribed by the law on treasury balance, such sum may be paid from the treasury balance.

Section 14

The Ministry of Finance shall have the power to restructure public debt by means of refinancing the existing debt, novation, repaying of debt before the expiration of repayment period, extending repayment period, rolling over, buying back or redeeming Government debt instrument, or undertaking any financial transaction which is beneficial to public debt restructuring specified in the Ministerial Regulation.

Section 15

For the purpose of public debt restructuring, the Ministry of Finance may repay debt for State enterprise or State financial institution. Such agency shall, after repayment, owe the Ministry of Finance in an amount equal to the amount paid by the Ministry of Finance, plus all expenses incurred in such repayment.

Section 16

In each raising of loan, the Ministry of Finance shall publish in the Government Gazette an information on the lending institution, currency of loan, aggregate amount of loan, conversion of a foreign currency into Thai Baht, interest rate, fee, expense, discount, repayment period of principal, purpose of loan use, condition, measure and other necessary substances within sixty days as from the date of the loan agreement is concluded or the issuance date of debt instrument, as the case may be.

Within sixty days as from the end of March and September each year, the Ministry of Finance shall publish summary report on public debt status in the Government Gazette. Such report shall present public debt incurred by the raising of loan and guaranteeing at the end of such months, including the raising of loan and guaranteeing incurred during December and March, and April and September, respectively.

Section 17

Within sixty days as from the end of the fiscal year, the Ministry of Finance shall report the raising of loan and guaranteeing incurred during the last fiscal year to the National Assembly for information. Such report shall at least specify details of the raising of loan and guaranteeing as well as its existing or expected result.

Section 18

The conversion of a foreign currency into Thai Baht shall be based on the exchange rate under the notification of the Bank of Thailand on the signing date of loan or guarantee agreement, or the issuance date of the debt instrument. The conversion of a foreign currency into Thai Baht to be published in the report under Section 16 paragraph two shall be based on the exchange rate of the last working day of March or September, as the case may be.

Section 19

If the local government organization, by the power as entrusted by the law establishing such local government organization or other laws, raises loan from other institutions other than the Ministry of Finance, the Ministry of Finance or other State agency shall not be responsible or guarantee such loan or set out annual appropriation to pay for principal or interest of such loan.

The provisions of paragraph one shall apply to the raising of loan of the agency under State supervision *mutatis mutandis*.

CHAPTER II

Debt incurred by the Government

Section 20

The Ministry of Finance shall raise loan for the following purposes:

- (1) financing budget in the case of deficit or where the expenditure exceeds the revenue;
- (2) economic and social development;
- (3) restructuring public debt;
- (4) on-lending to other government agency.

Thai Baht or foreign currency received from the raising of loan under (2) to (4) shall be used in accordance with the purpose of loan raising or the approval of the Council of Ministers without having to remit to the Ministry of Finance under the law on budgetary procedure and the law on treasury balance.

Section 21

In each fiscal year, the raising of loan by the Ministry of Finance for financing budget in the case of budget deficit or where the expenditure exceeds the revenue shall be in Thai Baht and the aggregate amount of loan shall not exceed:

- (1) twenty per cent of the existing annual budgetary appropriation and the additional budgetary appropriation;
- (2) eighty per cent of the budgetary appropriation as set out for repayment of principal.

Section 22

The raising of loan for economic and social development shall be made if there is necessary to spend money apart from the annual budgetary appropriation and such money is foreign currency, or there is necessary to raise loan so as to strengthen national financial security. In this case, the Ministry of Finance shall raise loan in foreign currency and the aggregate amount of loan shall not exceed ten per cent of the annual budgetary appropriation.

In raising of loan under paragraph one, the clarified purpose for spending shall be specified in accordance with rule, procedure and condition specified by the Minister as approved by the Council of Ministers.

Section 23

In raising of loan under Section 22, if the conditions of domestic monetary market is conducive and it shall be beneficial to develop monetary system, public finance and capital market, the Ministry of Finance may, with approval of the Council of Ministers, raise loan in Thai Baht instead of foreign currency.

Section 24

The raising of loan for public debt restructuring shall be made for the purpose of economics, minimizing foreign exchange risk, or diversifying debt repayment burden. In this regards, the Ministry of Finance shall:

- (1) raise loan for repayment of debt incurred by the Ministry of Finance in an amount of not exceeding the outstanding debt; or
- (2) raise loan for repayment of debt guaranteed by the Ministry of Finance in an amount of not exceeding the guaranteed debt.

The loan raised under (2) shall be calculated as loan under Section 21 or Section 22, as the case may be.

If the raising of loan under paragraph one is made for restructuring loan in Thai Bath, it shall be in Thai Baht.

If the repayment period of loan raised under paragraph one is longer than twelve months, it shall be reported to the Council of Ministers for information.

Section 25

If there is necessary to a State agency, agency under State supervision, local government organization, State enterprise or State financial institution to spend foreign currency for the project or work plan which the government deems it is necessary for economic and social development and if the raising of loan by the Ministry of Finance so as to make on-lending to such agency shall be economic and enhancing public debt management efficiency, the Ministry of Finance shall have the power to raise loan in foreign currency so as to make on lending to such agency under the rule, procedure and condition specified in the Ministerial Regulation.

The loan raised under paragraph one shall be calculated as loan under Section 22.

Section 26

The Ministry of Finance shall have the power to collect interest and repayment fee under Section 15 or on-lending fee under Section 25 at the rate and condition specified in the Ministerial Regulation.

CHAPTER III
Debt Guaranteed by the Government

Section 27

Subject to Section 19, the Ministry of Finance shall have the power to guarantee, in whole or in part, loan raised by State agency, State enterprise or State financial institution under rule, procedure and condition specified by the Minister as approved by the Council of Ministers.

Section 28

In each fiscal year, the Ministry of Finance shall guarantee loan not exceeding twenty per cent of the existing annual budgetary appropriation and the additional budgetary appropriation.

Section 29

The rule for guaranteeing and on-lending and the amount of money to be guaranteed or lent by the Ministry of Finance to the State agency or State financial institution shall be specified by the Committee.

The Ministry of Finance shall not guarantee loan for, or make on lending of money to, the State enterprise which is not provide public utility service and its operating result is loss for three consecutive years, provided that the resolution to dissolve such State enterprise is passed by the Council of Ministers and the guaranteeing of loan for, or making on-lending money to, such State enterprise is made during the dissolution process.

Section 30

The Ministry of Finance shall have the power to collect guarantee fee or other fees at the rate and condition specified in the Ministerial Regulation.

CHAPTER IV
Public Debt Policy and Supervision Committee

Section 31

There shall be a Committee called "Public Debt Policy and Supervision Committee" consisting of the Minister of Finance as Chairperson, the Deputy Minister of Finance entrusted by the Minister of Finance as Vice-Chairperson, Permanent Secretary of the Ministry of Finance, Secretary-General of the National Economic and Social Development Board, Budget Director of the Budget Bureau, Director-General of the Fiscal Policy Office, Comptroller-General of the Comptroller General Department and Governor of the Bank of Thailand as *ex officio* member, and not more than three qualified members appointed by the Council of Ministers.

The Director-General of the Public Debt Management Office shall be member and secretary of the Committee, and other persons nominated by the Committee shall be assistant-secretary.

A qualified member under paragraph one shall be appointed from a person with knowledge, skill and experience in monetary, finance, public debt management, budgetary or law, and shall have qualification and not be under any prohibition as follows:

- (1) being of Thai nationality;
- (2) not being government officer, except permanent lecturer of tertiary education institution;
- (3) not being political officer, advisor to political party or office of political party;
- (4) having no interest in public debt management.

Section 32

A qualified member shall hold office for a term of three years.

In the case where a qualified member vacates from office before term, the person appointed to replace the vacated member shall remain in office for the unexpired term of the qualified member.

At the expiration of term of office under paragraph one, a qualified member who vacates from office shall remain in office to continue his or her duty until the new member have been appointed.

A qualified member who vacates from office may be reappointed, but may not be appointed for two consecutive terms.

Section 33

In addition to vacating office at the end of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Council of Ministers due to disgrace behavior, dishonest or negligent in the performance of duty or inefficiency;
- (4) being a bankrupt;
- (5) being an incompetent or quasi-incompetent;
- (6) having been sentenced by a final judgment of the Court to a term of imprisonment, except for an offence committed through negligence or a petty offence;
- (7) being disqualified or being under any of the prohibitions under Section 31 paragraph three.

Section 34

At a meeting of the Committee, not less than one-half of the total number of its members must be present to constitute a quorum. In the case where the Chairperson is unable to attend a meeting, or is not in the meeting, the Vice-Chairperson shall preside over at a meeting. If both Chairperson and Vice-Chairperson are unable to attend a meeting, or are not in the meeting, the member shall select one among themselves to preside over at a meeting.

A decision shall be made by a majority of votes. In casting votes, each member shall have one vote. In case of an equality of votes, the person who presides over at a meeting shall cast an additional vote as a casting vote.

Section 35

The Committee shall have the following power and duties:

- (1) reporting public debt status to the Council of Ministers for information within sixty days as from the date the Council of Ministers states its policy to the National Assembly after taking office;
- (2) proposing public debt management plan for each fiscal year and its revision to the Council of Ministers for approval;
- (3) prescribing rule on loan raising, guaranteeing and repaying, and on public debt restructuring, including rule on expense related to loan raising and issuing and managing of debt instrument. After the rule has been approved by the Council of Ministers, the State agency, agency under State supervision, local government organization, State enterprise and State financial institution shall be bound to act in compliance therewith;
- (4) giving recommendation for the issuance of the Ministerial Regulation under Section 26 and Section 30;
- (5) performing other acts as prescribed by this Act or as entrusted by the Council of Ministers.

Section 36

The Public Debt Manage Office shall be responsible for general affair of the Committee and shall have the following power and duties:

- (1) studying and analyzing public debt structure as well as debt of any State enterprise which undertakes money lending business and debt of any State financial institution which is not guaranteed by the Ministry of Finance, including gathering and proposing information related to the estimate on financial need of public sector and on public debt management to the Committee for information;
- (2) managing public debt as well as raising of loan as reserve for treasury balance, disbursing of loan and repaying of debt;
- (3) giving consultation and suggestion on, and enhancing capability and efficiency in, debt management of State enterprise, local government organization and other State agency;
- (4) monitoring an implementation under agreement concluded with lending institution, and evaluating result thereof;
- (5) performing secretariat work of the Committee;
- (6) performing other acts as prescribed to be power and duties of the Office by this Act or other laws, or as entrusted by the Council of Ministers or the Committee.

Transitory Provision

Section 37

This Act shall not affect any loan raising, lending of money, guaranteeing and debt restructuring made by the Ministry of Finance prior to the date this Act comes into force.

Countersigned by

Police Lieutenant Colonel Taksin Shinawattana

Prime Minister

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