

**Small and Medium Enterprises Development Bank of Thailand Act,
B.E. 2545 (2002)**

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 1st Day of November B.E. 2545;

Being the 57th Year of the Present Reign

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

Whereas it is expedient to have the law on small and medium enterprises development bank of Thailand;

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 "Small and Medium Enterprises Development Bank of Thailand Act, B.E. 2545 (2002)".

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The Small Industry Finance Corporation Act, B.E. 2534 (1991) shall be repealed.

Section 4

In this Act:

"Bank" means the Small and Medium Enterprises Development Bank of Thailand;

"Small and Medium Enterprises" means a business of goods production, service, wholesaling, retailing or other businesses which their number of employees, fix assets value or paid up registered capital meet the requirements and conditions as determined by the Board;

"Capital Fund" means:

- (1) paid up capital;
- (2) premium of shares received by the Bank;
- (3) money received by the Bank from issuing certificates representing the right to buy its shares;
- (4) reserves appropriated from net profits;
- (5) net profit after appropriation;
- (6) reserves arising from assets revaluation;
- (7) money received by the Bank from issuing long-term debt instruments with a term to maturity of over five years which right of its holders ranked after ordinary creditor;

"Monetary Instrument" means a bill, debenture, bond and other instruments as determined by the Board;

"Company" means a limited company and public company limited;

"Board" means the Board of Directors of the Small and Medium Enterprises Development Bank of Thailand;

"Director" means a director of the Small and Medium Enterprises Development Bank of Thailand;

"Manager" means the manager of the Small and Medium Enterprises Development Bank of Thailand;

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

Section 5

The Minister of Finance and the Minister of Industry shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations and Notifications for the execution of this Act on the matter related to their power and duty.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I Establishment

Section 6

There shall be established the Bank called the "Small and Medium Enterprises Development Bank of Thailand".

The Bank shall be a juristic person.

Section 7

The head office of the Bank shall be in Bangkok or in adjacent province. The Bank may establish its branch or representative office inside and outside the Kingdom, but the Minister shall approve the establishment of the branch or representative office outside the Kingdom.

Section 8

The share capital of the Bank shall be ten thousand million Baht. Such share capital shall be divided into one hundred million shares with the par value at one hundred Baht per share. The Bank shall sell its shares to the Ministry of Finance, financial institutions or other persons in accordance with its regulations.

Section 9

Change in par value of share or share capital shall be made by the Bank with approval of the meeting of shareholders.

Section 10

The liabilities of a shareholder shall be restricted to the value of shares held thereby.

CHAPTER II Objective

Section 11

The objective of the Bank is to engage in business which develop, promote, assist, and support the establishment, management, expansion or improvement of the small and medium enterprises by through the granting of credits, guaranteeing, participating in undertaking, giving recommendation or suggestion, or giving other necessary services thereto under the provisions of this Act.

Section 12

The Bank shall have the power to conduct its business subjected to its objective as prescribed in Section 11, including the power to:

- (1) lend, or join with other persons to lend, money to small and medium enterprises, with or without security;
- (2) participate in undertaking of small and medium enterprises;
- (3) give recommendation on the matter of finance, technique, production, marketing, administration and management to small and medium enterprises, and assist small and medium enterprises so as to obtain financial, administrative, managerial or technical service;
- (4) provide fund for the operation of the Bank;
- (5) hold property or real right, buy, provide, sell, dispose, hire, rent, hire purchase, put on hire-purchase, borrow, lend, mortgage or accept mortgage, pledge or accept pledge, use or accept property as security for the performance of obligation, exchange, transfer, accept transfer, appoint or accept to be agency or broker, act in any manner whatsoever related to property or claim, and accept donated property;
- (6) open deposit accounts with other financial institutions as necessary for business operation of the Bank;
- (7) guarantee debt;
- (8) issue monetary instrument;
- (9) accept aval, and accept or intervene to honor of bill;
- (10) purchase, purchase at a discount or rediscount, sell, sale at a discount or rediscount of monetary instrument, or accept transfer of claim from the beneficiary;
- (11) collect interest, discount, fee and other service charges incidental to lending of money, purchasing, purchasing at a discount or rediscount, guarantee and give other services;
- (12) carry on foreign currency business;
- (13) establish a company, with approval of the Minister, to carry on business which is directly beneficial to the Bank;
- (14) accept deposit subject to withdrawal on demand, or at the end of specified period, and pay interest in accordance with the rate as notified by the Bank of Thailand, but the acceptance of deposit from public shall be approved by the Council of Ministers;
- (15) be an agent of any government agency or State enterprise for payment, collection or accept payment of any money in which the Bank has been entrusted by such government agency or State enterprise to pay to, or collect or accept payment from, other persons, or to be an agent of any person to do such act in accordance with its regulations;
- (16) invest cash surplus of the Bank by the way in which the Board thinks appropriate;
- (17) provide appropriate welfare for officials and employees of the Bank as well as their families;
- (18) grant credits or provide financial services which are ordinary business of the commercial bank or financial institution as notified by the Minister to small and medium enterprises;
- (19) carry on any businesses which related to its objective.

Section 13

The Bank shall not:

- (1) invest in any businesses in which its Director, Executive or Manager is a partner, director, shareholder or interest person, whether directly or indirectly;
- (2) grant credits to, or secure any debts of, the following individual, partnership or company, or accept of, give aval to, or intervene for, any bills in which the following individual, partnership or company is a drawer, maker or endorser:
 - (a) a Director, Executive or Manager;
 - (b) a spouse of a Director, Executive or Manager;
 - (c) a minor child of a Director, Executive or Manager;
 - (d) an ordinary partnership in which the person under (a), (b) or (c) is a partner;
 - (e) a limited partnership in which the person under (a), (b) or (c) is a partner with unlimited liability or is a partner with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;
 - (f) a company in which the person under (a), (b) or (c) or the partnership under (d) or (e) holds shares in an aggregate amount exceeding thirty per cent of the sold shares of such company;
 - (g) a company in which the person under (a), (b) or (c) or the partnership under (d) or (e) or the company under (f) holds shares in an aggregate amount exceeding thirty per cent of the sold shares of such company;
- (3) pay money or give asset to its Director, Executive, Manager, official or employee as commission or considerations for or due to any acts or businesses of the Bank other than meeting allowances or other benefits as determined by the Minister, annual bonus as determined by the Council of Ministers, monthly salary and other money which shall be paid in accordance with its regulations;
- (4) purchase or permanently hold immovable property, except:
 - (a) for use as its place of business, or for use of its Manager, official and employee in business of the Bank;
 - (b) such property is acquired by the performance of obligation, by securing of credit, or by purchasing at an auction in the case where it has been mortgaged or secured to the Bank as security for the performance of obligation.

All immovable property acquired by the Bank under (b) shall be disposed within five years as from the date on which they have been acquired by the Bank or within a longer period of time as approved by the Minister, except where an approval of the Minister to use such property for the purpose as prescribed in (a) has been given.

The disposing of immovable property under the former paragraph shall be made by auction or by other methods which cause better benefit to the Bank as the Board thinks appropriate.

CHAPTER III

Board and Management

Section 14

There shall be the Board called the "Board of Directors of the Small and Medium Enterprises Development Bank of Thailand", consisting of a Chairperson and not more than nine other Directors as elected by the meeting of shareholders. The Manager shall be *ex officio* Director.

The Board shall appoint the Manager, Deputy Manager or Assistant Manager to be Secretary of the Board.

Section 15

Any person who has following characteristics shall not be a Chairperson or Director:

- (1) being an official or employee of the Bank, except the Manager;
- (2) being or having been bankrupted;
- (3) having been imprisoned by a final judgment of imprisonment except for an offence committed through negligence or a petty offence;
- (4) having been a Director, Manager, Deputy-Manager, Assistant-Manager of a commercial bank or financial institution who was responsible, whether directly or indirectly, for an act which was a ground for withdrawal of license of such commercial bank or financial institution;
- (5) being a political official, holding any position in a political party, or being a political party official;
- (6) being an incompetent or quasi-incompetent.

Section 16

A Director shall hold an office for a term of three years.

In the case where an additional Director has been elected during the term of the previously elected Directors, the term of office of an additional Director shall be equal to the remaining term of the previously elected Directors.

At the end of term of office under paragraph one, if the new Director has not yet been elected, a Director whose term of office has expired shall remain in office until the completion of an election of the new Director.

A Director who vacates office at the end of term may be re-elected but not more than two consecutive terms.

Section 17

In addition to vacating office at the end of term under Section 16, a Director vacates office upon:

- (1) death;
- (2) resignation;
- (3) having any prohibited characteristics under Section 15;
- (4) being removed from office by resolution of the meeting of shareholders by votes of more than one-half of an amount of shares of shareholders who present at the meeting;
- (5) failure to comply with Section 20.

Section 18

If a Director vacates office by any cause, which is not at the end of term, the Board shall appoint a person who has no prohibited characteristics under Section 15 to be a Director in its next meeting, provided that the term of office of a Director who vacates office is less than sixty days.

The resolution of the Board under paragraph one shall be made by the vote of not less than three-fourths of the remaining Directors.

A person who is appointed as a Director under paragraph one shall hold office for the remaining term of office of a Director whom the appointee has replaced.

Section 19

At a meeting of the Board, the presence of not less than one-half of the total number of Directors is required to constitute a quorum. If the Chairperson is unable to attend the

meeting, or is unable to perform his or her duty, the Directors shall select one among themselves to preside over at the meeting.

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

Section 20

Any director, who has an interest in a matter under consideration, whether directly or indirectly, shall inform his or her interest to the Board and shall not present at the meeting on such matter.

Section 21

The Board shall have the power and duty to lay down policy of, and take control over, business of the Bank within the objective as prescribed in Section 11, including the power to:

- (1) issue regulations on shares;
- (2) issue regulations on lending of money, guaranteeing of debts, sales or sell by rediscount of bills to financial institutions, acceptance of pledges, acceptance of mortgages and other businesses of the Bank;
- (3) issue regulations on administration and business operation;
- (4) issue regulations on personnel, salary, and other expenses of the Bank;
- (5) issue regulations on procurement, finance, property, accounting and inspection;
- (6) issue regulations on welfare of official and employee of the Bank as well as their families;
- (7) approve the establishment of branch or representative office of the Bank.

Section 22

The Board may appoint the Executives Board, consisting of the Chief Executive and not more than three other Executives. The Manager shall be *ex officio* Executive.

An Executive appointed by the Board under paragraph one shall hold an office for a term of two years. In this case, the provisions of Section 15, Section 16 paragraph two, paragraph three and paragraph four, Section 17, Section 19 and Section 20 shall be applied *mutatis mutandis* to the prohibited characteristics, holding of office, vacating office, meeting and performance of duty of the Executives Board.

Section 23

The Board shall appoint a person with qualifications and without prohibited characteristics as follows to be the Manager:

- (1) being of Thai nationality;
- (2) having an experience in management in accordance with the rules and period of time as determined by the Board;
- (3) having knowledge or being expertise in the area of banking, economic, industry or law;
- (4) not being under the prohibited characteristics under Section 15 (2), (3), (4), (5) or (6); and
- (5) not being a government official, official of State enterprise, official or employee of other persons.

The holding of office, vacating from office, probation or working conditions, and working evaluation of the Manager shall be in accordance with the employment agreement as specified by the Board. The employment agreement shall no longer than four years. The Board may renew the employment agreement upon its expiration, but not more than two consecutive terms.

Chairperson shall sign the employment agreement with the Manager on behalf of the Bank.

Section 24

Executives Board shall have the power, duty and responsibility in laying down directions and methods for operation of the Bank in accordance with policy and target as determined by the Board. Such directions and methods for operation shall not obstruct power and duty of the Manager as prescribed in Section 25.

The Executives Board shall report on its works to the Board every three months.

Section 25

The Manager shall have the power and duty to carry out business of the Bank in accordance with objective, policy and regulations of the Bank and to perform other duties as entrusted by the Board or the Executives Board.

Section 26

The Manager shall be a superior of official and employee of the Bank and shall have the power and duty in accordance with the regulations of the Bank.

Section 27

As for external relations, the Manager shall act as the representative of the Bank, and he or she may, in accordance with the regulations of the Bank, delegates such power to an official or employee of the Bank to act on his or her behalf.

Section 28

If the Manager vacates office or is unable to perform his or her duty from time to time, the Deputy-Manager shall act as Acting Manager or acting for Manager, as the case may be.

If there is no Deputy-Manager or the Deputy-Manager is unable to perform his or her duty, the Board shall appoint an official of the Bank having rank or position as specified by the regulations of the Bank to act as Acting Manager or acting for Manager, as the case may be.

A person who acts as Acting Manager or acting for Manager shall have the same power and duty as the Manager.

Section 29

For the purpose of internal control and inspection, the Board shall appoint Inspectors Committee consisting of not more than five inspectors so as to inspect business operation of the Bank and the performance of duty of the Manager.

Section 30

When the Bank is a State enterprise under the law on budgetary procedure, the Chairperson, Director and Executive shall be entitled to receive meeting allowance or other benefits as specified by the Minister.

Section 31

A Director or Executive shall be liable to all damages of the Bank caused by the violation of the provision of Section 13, provided that he or she can prove that such violation had been made without the resolution of the Board, or his or her objection to such violation had been recorded in the minutes of the Board, or his or her written objection had been submitted to the Chairperson within three days as from the date the minutes of the Board had been approved.

CHAPTER IV

Supervision, Operation and Control

Section 32

When the Bank is a State enterprise under the law on budgetary procedure, the Minister shall have the power and duty to supervise business operation of the Bank. The Minister,

for this purpose, may order the Bank to give statement of fact and opinion, make report or object any acts of the Bank which contrary to government policy or resolution of the Council of Ministers, to specify supervision rules, to order the Bank to act in accordance with government policy or resolution of the Council of Ministers, and to investigate any acts of the Bank.

If the Bank is not a State enterprise under the law on budgetary procedure, the Minister of Finance shall have the power to specify the supervision rules on conditions of the Bank and to inspect all activities, assets and debts of the Bank. In this case, the Minister of Finance may delegate such power, entirely or partly, to the Bank of Thailand.

Section 33

The Bank shall maintain its capital fund in proportion to its assets, debts or contingent liabilities in accordance with the rules and procedures as prescribed by the Ministerial Regulations.

Section 34

If damages of the Bank caused by the carrying on business in accordance with an order of the Minister under Section 32 or an agreement between the Bank and the government, the Ministry of Finance may, with approval of the Council of Ministers, compensate such damages to the Bank. The Bank shall apply for such compensation in its next accounting year.

CHAPTER V

Meeting of Shareholders

Section 35

The Board shall cause an ordinary meeting of shareholders once a year within one hundred and twenty days after the end of each accounting year to:

- (1) consider annual report of the Bank;
- (2) approve a balance-sheet and profit and loss account;
- (3) approve an appropriation of net profit;
- (4) appoint an auditor for the year;
- (5) elect a Director;
- (6) other matters.

Section 36

The Board may convoke an extraordinary meeting of shareholders whenever it thinks appropriate.

Section 37

The shareholders of shares in an aggregate amount of not less than one-third of the number of the sold shares are required to constitute a quorum of both ordinary and extraordinary meeting of shareholders.

CHAPTER VI

Granting of Loans

Section 38

The granting of loans to small and medium entrepreneurs shall be in accordance with the regulations of the Bank. Such regulations shall specify qualifications of the borrower, purposes of loan, repayment period, ceiling of loan, requirement on securities of loan, interest rate, repayment and other relevant matters.

CHAPTER VII

Acquisition of Capital

Section 39

The Bank, for an acquisition of capital, shall have the power to:

- (1) raise loan as the Board thinks appropriate;
- (2) issue monetary instrument;
- (3) sell or sale at a discount of bill to financial institutions in accordance with its regulations;
- (4) receive grants from government or other persons.

Section 40

Where the Bank is a State enterprise under the law on budgetary procedure, it may request the government to guarantee loan rose from foreign or domestic source. An amount of loan, which the Bank may request the government to guarantee, and the principal of loans which have been guaranteed by the government shall not exceed twelve times of the capital fund of the Bank.

The calculation of foreign currency into Thai Baht under paragraph one shall base on foreign exchange rate as notified by the Bank of Thailand on the signing date.

CHAPTER VIII

Appropriation of Profit

Section 41

The net profit after deducting dividend, annual bonus under Section 30 and reserve shall be transferred to the accumulated profit account.

Section 42

At each payment of dividend, the Bank shall appropriate net profit to be reserve at not less than one-half of the paid dividend.

When the reserve under paragraph one is equal to, or in excess of, an amount of the paid-up value of shares, the Bank may cease to appropriate or reduce an amount to be appropriated to be reserve.

CHAPTER IX

Audit and Report

Section 43

The Board shall cause an account of the Bank to be audited at least once a year.

Section 44

The Board shall, within one hundred and fifty days after the end of each accounting year, submit a balance-sheet and profit and loss account as duly certified by the auditor together with its annual report to the meeting of shareholder.

Section 45

The Bank shall, within one hundred and eighty days after the end of each accounting year, submit its annual report, balance sheet and profit and loss account as approved by the meeting of shareholders to the Council of Ministers and the Parliament.

The report under paragraph one shall refer to an achievement of the Bank in the preceding year, statement on policy of the Bank and working plan for the next year.

CHAPTER X

Miscellaneous

Section 46

If the resolution of the meeting of shareholders agrees with the Board that condition of the Bank is ready and stable, the Board shall recommend the Minister to propose the Council of Ministers for approval. In this case, the provisions on selling of shares, shares and shareholders, meeting of shareholders, accounts and reports, and debentures under the law on public company limited shall be applied to the Bank *mutatis mutandis*.

Transitory Provisions

Section 47

All businesses, assets, debts, capital, accumulated profits, reserves including rights and liabilities of the Small Industrial Finance Corporation under the Small Industry Finance Corporation Act, B.E. 2534 (1991) existing on the date this Act comes into force shall be transferred to the Bank.

The transferred capital under paragraph one shall be deemed to be share capital of the Bank, and shareholders of the Small Industrial Finance Corporation shall be deemed to be shareholders of the Bank equal to an amount of the transferred shares under paragraph one. In this case, the certificate of shares issued by the Small Industrial Finance Corporation shall be deemed to be certificate of shares of the Bank until an issuance of new certificate of shares by the Bank.

Section 48

At the outset, the Board of the Small Industrial Finance Corporation shall act as the interim Board, and shall cause the meeting of shareholders so as to elect the Board within thirty days as from the date this Act comes into force.

The power and duty of the Board of the Small Industrial Finance Corporation under paragraph one shall come to an end upon the completion of an election.

Section 49

At the outset, the General Manager of the Small Industrial Finance Corporation shall be deemed to be the Manager of the Bank under the conditions on work, term of office, termination of employment, evaluation, and wages or other benefits as specified in the employment agreement made with the Small Industrial Finance Corporation. The conversion to be the Manager of the Bank under this Act shall not be deemed to be dismissal by employer, and the working period while being the General Manager of the Small Industrial Finance Corporation shall be deemed to be working period for the Bank.

Section 50

An official and employee of the Small Industrial Finance Corporation shall be deemed to be official or employee of the Bank, and shall be entitled to receive monthly salary, wage, compensation, welfare and other benefits at the rate he or she previously receive. The Bank shall finish the determination of position, and rate of salary, wage, compensation, welfare and other benefits of such person within one hundred and twenty days as from the date this Act comes into force.

The conversion to be official or employee of the Bank under this Act shall not be deemed to be dismissal by employer, and the working period while being an official or employee of the Small Industrial Finance Corporation shall be deemed to be working period for the Bank.

Section 51

The registered provident fund of the Small Industrial Finance Corporation established under the Provident Fund Act, B.E. 2530 (1987) shall be continued whereby the Bank is an employer.

Countersigned by

Pol. Lt. Col. Thaksin Shinawatra

Prime Minister

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