

The Trust for Transactions in Capital Market Act, B.E. 2550 (2007)

Translation

BHUMIBOL ADULYADEJ, REX.,

Given on the 30th Day of December B.E. 2550;

Being the 62nd Year of the Present Reign

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

Whereas it is expedient to enact a law on the trust for transactions in the capital market;

Whereas this Act contains certain provisions relating to the restriction of rights and liberties of persons, which Section 29, in conjunction with Section 32, Section 33, Section 41, and Section 43 of the Constitutions of the Kingdom of Thailand so permit by virtue of law;

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

Section 1

This Act shall be called the "the Trust for Transactions in Capital Market Act, B.E. 2550."

Section 2

This Act shall come into force after ninety days from the date of its publication in the Government Gazette, except Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 54, Section 55, Section 56, Section 57, Section 77, and Section 78 which shall come into force on the day following the date of its publication in the Government Gazette.

Section 3

In this Act:

"trust" means legal relationship arising from a trust instrument.

"trust instrument" means a contract whereby a person, called a settler, transfers or creates real right or any right appertaining to property to or for another person, called a trustee, with trust and confidence in order that the trustee shall manage such property for the benefit of beneficiaries. This meaning includes a document showing the intention to create trust whereby a settler and a trustee are the same person.

"trust property" means any property as specified in a trust instrument, including any property, interest, debt and liability arising from management of a trust in compliance with a trust instrument or this Act.

"SEC" means the Securities and Exchange Commission under the Securities and Exchange Act.

"SEC Office" means the Office of the Securities and Exchange Commission under the Securities and Exchange Act.

"competent officer" means any person appointed by the Minister to perform duties under this Act.

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

Section 4

A trust may be created for the benefit of transactions in the capital market as specified in the notification of the SEC in relation to the following transactions:

- (1) the issuance of securities under the Securities and Exchange Act;

- (2) the securitization under the Royal Enactment on Special Purpose Juristic Persons for Securitization;
- (3) other transactions which are supportive or beneficial to capital market development.

Section 5

The SEC and the SEC Office shall issue a notification to the general public stipulating the period for consideration and making of order with respect to the issuance of license and granting of approval under this Act.

Section 6

All rules, regulations, notifications, directives or stipulations issued under this Act by the SEC or the SEC Office which are of general application shall come into force upon their publication in the Government Gazette.

Section 7

The Minister of Finance shall be in charge of this Act and shall have the power to issue notifications and appoint competent officers to perform duties under this Act.

Such notifications shall come into force upon publication in the Government Gazette.

Chapter 1

Supervision of Trust for Transactions in Capital Market

Section 8

The SEC shall have the power and duty to formulate policies to promote, develop and supervise trust for transactions in the capital market. Such power and duty shall include:

- (1) the issuance of rules, regulations, notifications, orders, directives or stipulations under this Act;
- (2) the determination of application fees, approval fees or operating fees for business undertaking under this Act;
- (3) the prescription of guidelines for consideration of any issues that may arise from the enforcement of this Act.

Section 9

The SEC Office shall have the power and duty to perform any act necessary for the implementation of the SEC's resolutions and to perform any other acts under the provisions of this Act. Such power and duty shall include:

- (1) the issuance of notifications or orders pursuant to this Act;
- (2) the receipt of administrative fines imposed and fees charged under this Act;

All fines and fees received under subsection (2) shall be properties of the SEC Office.

Section 10

The SEC Office shall have the duty to disclose information relating to any violation and penalty imposed on the violators under this Act.

The disclosure of any other information obtained in the performance of duties under this Act shall be in accordance with the rules specified in the notification of the SEC.

Chapter 2

Creation of Trust

Division 1
Trust Instrument

Section 11

A trust is created when a written contract is made and a settlor transfers property or creates real right or any right appertaining to property constituting trust property to or for a trustee.

In cases where a settlor makes a declaration to act in trusteeship, a trust shall be created where a written declaration to create the trust has been made and submitted to the SEC Office by the settlor, in accordance with the rules specified in the notification of the SEC.

Section 12

A settlor shall be any of the following juristic persons:

- (1) company issuing securities under the Securities and Exchange Act;
- (2) originator under the Royal Enactment on Special Purpose Juristic Persons for Securitization;
- (3) juristic person having the qualifications specified in the notification of the SEC.

Section 13

A trust instrument shall not allow a settlor or a trustee to be a beneficiary unless there is another beneficiary or other beneficiaries, and the settlor or the trustee, by virtue of beneficiary, receives interest from the trust property not more than the proportion specified in the notification of the SEC.

In cases where the settlor or the trustee, by virtue of beneficiary, receives interest more than the proportion specified in the first paragraph, the interest shall be allocated to another beneficiary or other beneficiaries.

Section 14

A trust instrument without the following particulars and statements shall be void:

- (1) names of a settlor and a trustee;
- (2) beneficiary identifiable by name, qualification or any character that specifies beneficiaries of trust;
- (3) objectives of trust;
- (4) property constituting trust property.

Section 15

The SEC Office may issue notifications specifying particulars and statements of trust instrument in addition to those specified in Section 14.

Section 16

The creation of trust in the following manners shall be void:

- (1) the creation of trust in contrary to Section 11 or Section 12;
- (2) the creation of trust assigning trusteeship to a person without an approval to undertake trust business under this Act, or a trustee temporarily suspended from undertaking of trust business or whose approval to undertake trust business revoked or prohibited to engage in a trust instrument.

Section 17

No provision in a trust instrument shall contravene this Act. Any provisions in the trust instrument that contravene this Act shall be void.

Division 2
Effects of Creation of Trust

Section 18

When a trust is created, rights and duties of the settlor, the trustee and the beneficiary shall be as follows:

- (1) the settlor shall have rights and duties only as specified in the trust instrument;
- (2) the trustee shall have legal right over trust property as an owner of the property or a person entitled to the right over the property, and shall have the duty to manage the trust property in accordance with the trust instrument and this Act;
- (3) the beneficiary shall have the right to receive benefits arising from the management of trust property and any rights as specified in the trust instrument and this Act.

Section 19

In cases where the settlor, the trustee or the beneficiary of a trust dies, becomes insolvent, becomes dissolved or ceases to be a juristic person or where the trustee of a trust has been altered, the trust shall not be affected unless the trust instrument provides otherwise.

Division 3
Amendment to Trust Instrument and Alteration of Trustee

Section 20

An amendment to a trust instrument shall be made as provided by its terms and conditions. In absence of such terms and conditions, the beneficiary and the trustee may mutually agree to amend the trust instrument to the extent that it is not contrary to the purpose of the creation of trust.

Section 21

In cases where the SEC Office has issued notifications specifying additional particulars and statements under Section 15, the SEC Office shall have the power to direct the trustee to add such particulars and statements to the trust instrument within a reasonable period of time if it is appropriate for the benefit of the beneficiary, and not contrary to the purpose of the creation of trust.

The trustee shall amend the trust instrument as directed in the first paragraph in accordance with the procedures specified in Section 20 or with the SEC Office's approval.

Section 22

An alteration of trustee shall be made as provided by the terms and conditions of the trust instrument or when any of the following causes occurs:

- (1) the trustee resigns;
- (2) the trustee is under receivership, ceases to be a juristic person, or ceases to be a commercial bank;
- (3) the trustee is dismissed from trusteeship;
- (4) the SEC temporarily suspends the trustee's undertaking of trust business, or revokes the approval granted to the trustee to undertake trust business.

Section 23

A trustee may resign or be dismissed from trusteeship as provided by the terms and conditions of the trust instrument. In the absence of such terms and conditions, resignation or dismissal of trustee shall comply with the following conditions:

- (1) the trustee shall, in writing, notify the beneficiary of its resignation in compliance with the rules and period as specified in the notification of the SEC Office, provided that the resignation shall not cause damages to the beneficiary;
- (2) when there is evidence that the trustee fails to perform the duties specified by the trust instrument or this Act, the beneficiary may remove the trustee in accordance with the procedures and conditions as specified in the notification of the SEC Office.

Section 24

An appointment of a new trustee shall be made as provided by the terms and conditions of the trust instrument. In the absence of such terms and conditions, the appointment of a new trustee shall be made in accordance with the rules as specified in the notification of the SEC Office.

Section 25

In cases where the trust instrument appoints a sole trustee or several trustees and specifies each trustee to separately manages the trust property, if there is a cause to alter the trustee but the new trustee has not yet been appointed, unless the trust instrument provides otherwise, the trust property shall be managed during such period in compliance with the following criteria:

- (1) in cases where the trustee resigns, the former trustee shall perform its duties until the trust property is completely vested in a new trustee;
- (2) in cases where the trustee is dissolved or liquidated or suspended from its undertaking of any business or bankrupt, a receiver, a liquidator or any other person empowered by law to act in the similar capacity as the aforementioned persons, as the case may be, shall undertake necessary and appropriate actions until a new trustee is completely vested with the trust property;
- (3) in cases where the trustee is dismissed, temporarily suspended from its undertaking of trust business or whose approval to undertake trust business revoked by the SEC, the former trustee shall perform its duties only to protect the benefits or exercise the right over the trust property to prevent the trust property from damage, depreciation or uselessness until the new trustee is completely vested with the trust property.

Section 26

In case of alteration of trustee, the former trustee or the surviving trustee shall undertake all actions necessary to vest the new trustee with the right over the trust property and to allow the new trustee to learn of the previous and onward management as well as deliver documents, evidence and any information relating to the management of the trust property in order to enable the new trustee to perform its duties. In so doing, the former trustee or the surviving trustee, as the case may be, shall sign a statement certifying the correctness and completeness of things delivered to the new trustee and delivers such statement to the new trustee.

The former trustee or the surviving trustee shall undertake all actions under the first paragraph within thirty days from the date on which the new trustee takes its trusteeship.

If the former trustee or the surviving trustee fails to undertake the actions within the period specified in the previous paragraph, the new trustee shall file a motion with the court to issue an order to declare that the new trustee has been fully vested with the trust property.

In cases where the former trustee or the surviving trustee fails to undertake the actions under the first paragraph, if there is damage to the trust property or the beneficiary, the former trustee or the surviving trustee shall be liable to such damage. The beneficiary may claim compensation from the former trustee or the surviving trustee for the benefit of the trust property if damage to the trust property occurs and the new trustee has not yet been fully vested with the trust property in accordance with Section 27.

Section 27

The new trustee shall subrogate the rights and duties of the former trustee or exercise the rights and duties jointly with the surviving trustee, as the case may be, and become a co-party in a lawsuit or a party to whom the court's judgment is bound, when the new trustee is completely vested with the trust property.

Section 28

The new trustee shall notify in writing to the third person known to the new trustee as the party in the agreement made with the former trustee or the surviving trustee, that the new trustee has subrogated the rights and liabilities of the former trustee or, together with the surviving trustee, retains the rights and liabilities as such.

In cases where the failure of the new trustee to perform the duties under the first paragraph causes damage, the new trustee shall compensate the trust property or the third person for such damage, as the case may be.

Section 29

In cases where there is a cause of alteration of trustee but the appointment of a new trustee cannot be preceded due to an inevitable cause, an interested party may file a motion with the court for the appointment of the new trustee. If the new trustee cannot be appointed by the court, the court shall terminate the trust and appoint any person to manage the trust property in accordance with Section 52.

An appeal of court's ruling under the first paragraph shall be submitted to the Supreme Court.

Chapter 3

Right, Duty and Liability of Trustee

Section 30

For the highest benefit of beneficiaries, a trustee has the duty to manage a trust with integrity and prudence as a professional with expertise by providing fair treatment to beneficiaries.

In furtherance of the performance of the trustee's duty under the first paragraph, the SEC shall have the power to specify in details the trustee's duty.

A trust instrument shall contain no clauses exempting the trustee from liability arising from failure to perform the duty under the first paragraph with intention, dishonesty or gross negligence.

Section 31

In managing a trust, a trustee shall be prohibited to act in conflict of interest with the trust regardless of whether such act is done for the benefit of its own or others, except where it is the trustee's claim for its remuneration or where the trustee is able to show that the trust is managed with fairness under which all related information has been sufficiently disclosed to beneficiaries who thereafter hold no objection to the act. The disclosure and objection shall subject to the rules specified in the notification of the SEC Office.

Section 32

A trustee shall be prohibited to set off the obligation arising beyond the performance in trusteeship owed by the trustee to a third person against the obligation arising from the management of trust owed to the trust by the third person.

The set-off in contravention of the first paragraph is void.

Section 33

In making a juristic act or a transaction with a third person, a trustee shall notify the third party in writing that it acts in trusteeship and expressly stipulates the information as such in the evidence of the juristic act or the transaction.

Section 34

A trustee shall prepare an account of trust property separately from any other accounts under its responsibility. In cases where a trustee manages several trusts, the trustee shall prepare the account of trust property of each trust separately. In doing so, the trustee shall keep such account correct and up-to-date.

In managing a trust, a trustee shall segregate the trust property from those held in its own capacity and any property in its possession. In cases where the trustee manages several trusts, the trustee shall segregate the trust property of one trust from another.

Section 35

In cases where a trustee fails to perform the duty under Section 34 which causes the trust property to be commingled with the property held in its own capacity in the manner that it is unable to distinguish the trust property from those held in the trustee's own capacity, it shall be presumed that:

- (1) the commingled property is held in trust;
- (2) the damage and liability arising from the management of commingled property are the trustee's own bearing;
- (3) the benefit arising from commingled property belongs to the trust.

The commingled property under the first paragraph shall include the property that is transformed into a different form or state.

Section 36

In cases where a trustee fails to perform duty under Section 34 which causes the trust property of two or more trusts to be commingled in the manner that it is unable to identify to which respective trust the property belongs, it shall be presumed that the commingled property, including property that is transformed into a different form or state, and any benefits or obligations incurred from the management of such commingled property shall belong to each trust in proportion of an amount brought to commingle.

Section 37

Management of trust is a trustee's personal duty.

A trustee shall not delegate its duty to other persons except where:

- (1) the trust instrument provides otherwise;
- (2) it is a transaction that is not personal in nature and needs no capability of trustee's profession;
- (3) it is a transaction that a reasonable prudent owner of the property of the same characteristics as the trust property, who manages such property with similar objectives to those of the trust, may delegate a third person to manage such property;
- (4) any other cases as specified by the SEC in its notification as delegable matters.

In cases where the trustee contravenes the first paragraph, the management shall bind the trustee personally, and not bind the trust.

Section 38

In cases where a trustee delegates any other person to manage trust property under Section 37, the trustee shall thoroughly and carefully select such person as well as supervise and audit the delegated management adequately. The SEC shall have the power to prescribe in its notifications details for compliance of the trustee in the said matter.

Section 39

In cases where several trustees are appointed, the trustees shall jointly manage the trust unless the trust instrument provides the duties of each trustee specifically.

The trustees' joint management of trust shall be as follows:

- (1) in cases where there is title deed or document of title of trust property, all trustees shall be named as the co-owners of real right or any rights in such deed or document;
- (2) in cases where a resolution is required, such resolution shall be unanimous unless the trust instrument provides otherwise.

The trustee shall be bound personally for any obligations or liabilities incurred from the juristic act done in breach of the resolution specified in subsection (2).

Section 40

In case of alteration of a trustee, if the new trustee finds that the previous management of the trust has contravened the trust instrument or this Act and caused damage to the trust, the new trustee shall have the following duties:

- (1) to claim damages from a liable trustee;
- (2) to recover a property from a third person regardless of whether such third person directly acquired such property from the former trustee and whether such property is transformed into a different form or state, except the acquisition of the property was done in good faith and for value, providing further that the person acquired that property did not know or should not have known that the acquired property has been disposed or transferred in breach of trust.

Section 41

In managing a trust or delegating any person to manage a trust in accordance with Section 37, if there is any expenses, proceeds or other properties obliged to pay a third person which a trustee rightfully pays from property held in its own capacity with due necessity, the trustee shall be entitled to obtain reimbursement from proceeds or property out of the trust property unless the trust instrument specifies that the payment shall be borne by the trustee.

The right to obtain reimbursement from the proceeds or property under the first paragraph shall have priority over the claim of a beneficiary and the claim of a third person against the trust property and may be immediately exercised, at any time before the trust is terminated. In cases where the transformation of trust property is necessary in order to reimburse the proceeds or property to the trustee, the trustee is empowered to do so but only to the extent that it is done in good faith.

For the purpose of protecting the trust property, the SEC shall have the power to issue notifications prescribing rules, conditions and procedures concerning the payment of the trustee's own money or property to the third person under the first paragraph or the exercise of trustee's right under the second paragraph.

Section 42

A trustee shall be prohibited from exercising the right under Section 41 unless the trustee has performed all of its obligations owed to the trust except where those obligations can be set off under the Civil and Commercial Code.

Section 43

In cases where a trustee fails to manage the trust in accordance with the trust instrument or this Act, the trustee shall be liable to indemnify the trust.

In cases where it is necessary and there is a reasonable ground for the benefit of the trust, the trustee may apply for the SEC Office's approval prior to the management of trust in a different manner from those stipulated in the trust instrument. The trustee shall not be liable under the first paragraph if the trustee manages the trust property as approved, in good faith and for the best interest of the trust.

In case of joint management of the trust by several trustees under Section 39, all trustees shall have joint liability under the first paragraph provided, however, that liability amongst the trustees shall not apply the principle of joint debtor, but shall be in accordance with the terms as agreed by those trustees. Whatever agreed, any trustee shall not be liable to other trustees, if proven that it had objected or had been defrauded in failing to comply with the trust instrument or this Act.

Chapter 4

Right and Protection of Beneficiary

Section 44

Subject to Section 40 and the second paragraph of Section 43, a beneficiary has the right to demand a trustee to manage a trust in accordance with the trust instrument or this Act and to claim compensation for the benefit of the trust, in cases where the trustee fails to manage the trust in accordance with the trust instrument or this Act.

In cases where the trustee fails to manage the trust in accordance with the trust instrument or this Act and causes the trust property to be disposed or transferred to any other person, the beneficiary shall be entitled to trace and recover such property from any person regardless of whether such person directly acquired such property from the trustee and whether the trust property was transformed into a different form or state, unless the acquisition of the property was done in good faith and for value, providing further that the person acquired that property did not know or should not have known that the acquired property has been disposed or transferred in breach of trust.

The beneficiary shall be entitled to be reimbursed for any actual expenses incurring from exercising right under the first and second paragraphs from the trust in an amount as ordered by the court.

Section 45

Any person, acquired property from a trust or assisted in transferring of the trust property if knew or should have known that a trustee had transferred property in contravention to the trust instrument or this Act and such transferring has caused damage to the trust, shall jointly with the trustee under Section 44 be liable as joint debtors. A beneficiary shall be entitled to claim compensation from such person for the benefit of the trust. The provision of the third paragraph of Section 44 shall apply *mutatis mutandis*.

With respect to the liability under the first paragraph, the court shall determine an amount of liability for such person as the court thinks fit by considering circumstances in which such person's participation causing damage to the trust property.

Section 46

In cases where a beneficiary has notified the new trustee to perform duty under Section 40 within a reasonable period of time but the new trustee fails to perform duty within such period, the beneficiary shall be entitled to claim compensation from the liable trustee or trace and recover property from a third person, as the case may be, for the benefit of the trust, and the provisions of the third paragraph of Section 44 shall apply *mutatis mutandis*.

Section 47

A beneficiary shall be entitled to inspect and make copy of an account of trust property or any document as specified in the notification of the SEC Office during the business hours of a trustee.

The trustee may be reimbursed for the actual and necessary expense of the copying under the first paragraph but not more than the rate specified in the notification of the SEC Office.

Section 48

In cases where several beneficiaries have the right to obtain an interest specified under the second paragraph of Section 13 or to obtain the remaining property after the trust is terminated under the third paragraph of Section 53, unless the trust instrument provides otherwise, each beneficiary shall obtain such interest or property in proportion to the benefit which each beneficiary is entitled to obtain from the trust as specified in the trust instrument.

Section 49

Unless a trust instrument provides otherwise, in case where there are several beneficiaries, exercise of such beneficiaries right under this Act shall be under the following criteria:

- (1) the amendment to the trust instrument under Section 20 or Section 21, the removal of the trustee under Section 23 (2), the appointment of the new trustee under Section 24 or filing of the motion for termination of trust under Section 51 (2), can be made only by approval from the beneficiaries having interest in the trust property not less than three-fourth of all interest in the trust property.
- (2) the claim of compensation for the benefit of the trust property under the fourth paragraph of Section 26, the motion for imposing the trustee to perform duty in accordance with the trust instrument or this Act, the claim of compensation for the trust or the recovery of the trust property under Section 44, Section 45 or Section 46, can be exercised by any individual beneficiary.

Section 50

Trust property shall not be divided amongst personal creditors of a trustee.

In cases where a trustee becomes bankrupt as a result of its own debt or ceases to be a juristic person, the trust property shall not be deemed as bankruptcy estate or property in liquidation, as the case may be.

Chapter 5

Termination of Trust

Section 51

A trust shall come into termination as specified in the trust instrument and in the following cases:

- (1) a purpose of the trust instrument has been accomplished;
- (2) a court gives a judgment or grants an order to terminate the trust under Section 29 or as requested by a trustee or a beneficiary;
- (3) the trustee remains the only beneficiary;
- (4) the causes of alteration of the trustee under Section 22 (1), (2), (3) or (4) occur whereas the trust instrument prohibits alteration of the trustee.

Section 52

Subject to Section 29, a trustee shall perform its duty in order to collect, dispose and allocate property in accordance with Section 53 upon termination of trust, except where dissolution, liquidation or bankruptcy of the trustee causes the termination of trust, a liquidator or an official receiver of the trustee, as the case may be, shall perform such duty.

Section 53

The payment of debts and expenses upon termination of trust shall be in the following orders:

- (1) the expenses accruing from collecting, disposing of and distribution of property;
- (2) the fees and tax that have to pay or due;
- (3) the consideration of the person under Section 29 or Section 52, the expenses in taking legal action having been borne by a beneficiary under the third paragraph of Section 44, Section 45 or Section 46 and the expenses accruing in the management of the trust which the trustee can rightfully claim from the trust property, and consideration of trustee;
- (4) other debts.

If the trust property is insufficient to pay expenses or debts in any order, the payment shall be allocated proportionally in such the order.

The remaining of the trust property after the payment under the first paragraph shall be allocated to the persons specified in the trust instrument or to the beneficiary, if not so specified.

Section 42 shall apply *mutatis mutandis* to the payment of debt to the trustee under the first paragraph.

The SEC Office has the power to specify in its notification the rules, conditions and procedures relating to collection, disposal or allocation of the property specified under the first paragraph.

Chapter 6 **Supervision of Trustee**

Division 1 **Approval**

Section 54

No person shall undertake trust business without an approval from the SEC.

Section 55

A person eligible to apply for an approval to undertake trust business shall be:

- (1) a commercial bank under the Commercial Banking Act;
- (2) a financial institution established under specific law;
- (3) any juristic person as specified in the notification of the SEC.

The person applying for the approval under the first paragraph shall have financial condition, operating system, qualification and paying fees as specified in the notification of the SEC.

The SEC Office shall publish the names of the trustees approved to undertake trust business.

Section 56

Where it is necessary to maintain integrity or trustworthiness of the system of trust business, the SEC shall have the power to specify conditions for undertaking trust business.

In cases where there has been a change in the necessary circumstance as provided in the first paragraph, the SEC may modify or change the conditions already specified.

Division 2
Supervision of Business Operation

Section 57

In managing a trust, a trustee shall have appropriate operating systems to:

- (1) segregate between trust property and the property held in its own capacity;
- (2) manage the trust property in accordance with the trust instrument and this Act;
- (3) record the ownership or right over the trust property, incomes, expenses and debts of the trust and any relating accounts of the trust;
- (4) oversee and collect interest of the trust;
- (5) allocate interest to beneficiaries;
- (6) control, audit and prevent the management of trust from contravention to the trust instrument and this Act as well as the management of trust property in dishonest manner;
- (7) any other operating systems as the SEC may stipulate in its notification.

Section 58

In furtherance of the interest of the beneficiary or protect the third person engaging in juristic acts with a trustee, the SEC shall have the power to specify in its notification the rules relating to the power and duty of the trustee, the maintenance of the financial condition of the trustee, indemnity insurance for liability of the trustee and the submission of report or any documents to the SEC Office.

Section 59

A trustee shall prepare financial statements of a trust segregating the property held in trust from that held in its own capacity, with consideration to the accounting standard as specified by the law relating to the accounting profession.

The financial statements under the first paragraph must be audited and given opinion by an auditor approved by the SEC Office, and such auditor must not be a director, an officer, or an employee of a trustee.

The financial statements under the first paragraph shall be submitted to the SEC Office and the SEC Office may disclose or direct the trustee to disclose financial statements publicly in accordance with the rules specified in the notification of the SEC Office.

The SEC shall have the power to specify in its notification the cases where it is proper not to prepare the financial statements under the first paragraph, whereby the conditions with which the trustee shall comply may also be prescribed.

Section 60

In order to prevent or cease the damage to a trust or the public, the SEC Office shall have the power to direct a trustee to act or refrain from acting within the prescribed period of time, in cases where its director, manager, officer, employee, agent or delegate acts or causes the trustee to act as follows:

- (1) fail to perform the duty of the trustee under the trust instrument or this Act;
- (2) manage the trust property inappropriately manner or cause damage to the trust;
- (3) fail to submit reports or documents specified by the SEC's notification under Section 58;
- (4) fail to meet the conditions under Section 56.

Section 61

In avoidance of conflicts with other laws when applying trust for transactions in the capital market, it shall proceed as follows:

- (1) in cases where a trustee prepares an account of property and segregate the trust property in compliance with Section 34, the regulator under the law relating to the supervision of commercial banks or financial institutions, law relating to securities and exchange or any law prescribed by ministerial regulation shall not consider or compute the trust property as the property held in the trustee's own capacity to satisfy any duty or requirement imposed on the trustee under such laws;
- (2) in furtherance of the spirit of the laws specified under (1), the Minister upon recommendation of the regulators under such laws shall have the power to issue ministerial regulations governing consideration or computation of the trust property as the property of beneficiaries for the purpose of complying with any requirement of such laws.

Chapter 7 Competent Officer

Section 62

In the execution of his duties, a competent officer shall have the following power to:

- (1) enter into the business place of a trustee or the place where the data of a trustee is collected or processed during the hours between sunrise and sunset or during the business hours of such places in order to examine the operating of trust business, including collecting the relevant documents, evidence or information;
- (2) enter into a commercial bank or a financial institution during the hours between sunrise and sunset, or during the business hours of such places, to inspect accounts, documents, or evidence which may be related to the inspection or the execution under this Act;
- (3) search any place where there is a reasonable ground to believe that there is a commission of offence under this Act during the hours between sunrise and sunset or during the business hours of such place;
- (4) attach documents or evidence related to the commission of offences under this Act for the purpose of inspection or taking legal action which shall not exceed one hundred and eighty days;
- (5) order a trustee or any person who is authorized to collect or process the data of a trustee including its director, officer, employee and auditor to testify, deliver, or present accounts, documents, seals or other evidence related to the trust business;
- (6) order any persons who have known any related actions or facts and may be useful in the execution of the duties of the competent officer to testify, deliver, or present accounts, documents, evidence or any objects related to, or necessary for, the execution of the duties of the competent officer.

After having entered and inspected under subsection (1) or (2) or undertaken the search under subsection (3), if it has not been completed, the competent officer may continue such inspection or search into the night or beyond the business hours of such place.

In the execution of duties under subsection (1) or (2), the competent officer shall not take any act in the nature of a threat or search under the Criminal Procedure Code. In the case under subsection (3), the search warrant is required unless there is a reasonable ground to believe that by the time the search warrant is obtained, the document or evidence may be

relocated, concealed, destroyed, or deformed, then the search, seizures, or attachment of documents or evidence relating to the commission of offences shall be undertaken without the search warrant. The search shall, however, comply with the search procedure under the Criminal Procedure Code and shall not be undertaken after sunset unless such period is business hours of such place.

The exercise of powers of the competent officer under the first paragraph shall be carried out against the person who is directly involved in the matter under inspection and for subsection (2), (3), (5) or (6) shall require prior approval from the SEC Office and in case of subsection (5) or (6), the competent officer shall specify a reasonable period for complying with the order to such person.

Section 63

Where it is necessary to obtain computed data for the execution of his duties, a competent officer shall request the competent officer under the law relating to Computer Related Crime to undertake any actions to obtain such computed data which shall be deemed to be evidence under this Act.

Section 64

In the execution of duties of a competent officer, relevant persons shall provide reasonable assistance.

Section 65

In the execution of his duties, a competent officer shall present his identification card to the person involved.

The identification card of the competent officer shall be in the form specified by the Minister.

Section 66

In the execution of his duties under this Act, the competent officer shall be an officer under the Penal Code.

Chapter 8

Sanctions, Statute of Limitation and Settlement Committee

Division 1

Administrative Sanction

Section 67

The administrative sanctions are as follows:

- (1) probation;
- (2) administrative fine;
- (3) public reprimand;
- (4) restriction to operate trust business;
- (5) suspension of trust business operation for a specified period, with regard to particular or all trust instruments;
- (6) revocation of approval.

Section 68

In the imposition of administrative fine, the amount of such fine shall not exceed one million Baht per count.

In cases where the person subject to the administrative fine under the first paragraph fails to pay such administrative fine, the provisions governing the administrative enforcement under the Administrative Procedure Act shall apply *mutatis mutandis*.

Section 69

The following persons shall have the power to impose administrative sanctions:

- (1) the SEC Office shall have the power to impose administrative sanctions under Section 67 (1) or (2);
- (2) the administrative panel under Section 72 shall have the power to impose administrative sanctions under Section 67 (1), (2), (3) or (4);
- (3) the SEC shall have the power to impose administrative sanctions under Section 67 (1), (2), (3), (4), (5) or (6).

In the ordering of the administrative sanctions under Section 67, the competent authority shall have the power to impose one or several sanctions and shall also have the power to order the subjected person to undertake or refrain from undertaking any action in order to rectify or prevent any repetitive violation or noncompliance with the Act, rules, orders or conditions specified under this Act.

Section 70

Any trustee undertaking the following acts shall be subject to the administrative sanctions under Section 67:

- (1) fails to pay partial or total fees as specified by Section 8 (2);
- (2) contravenes or fails to comply with Section 25, Section 26, the first paragraph of Section 30, Section 31, Section 32, Section 33, Section 34, Section 37, Section 38, Section 39, Section 40, Section 42, Section 52, Section 53, Section 57 or the first paragraph of Section 59, or contravenes or fails to comply with the rules, directives, conditions, procedures or details issued under Section 21, Section 31, the third paragraph of Section 41, the fifth paragraph of Section 53, Section 56, Section 58, the third paragraph or fourth paragraph of Section 59 or Section 60;
- (3) obstructs or fails to give assistance to a beneficiary who inspects book of trust property under Section 47.

Section 71

In cases where a trustee commits an offence under Section 70, the director, manager or any person responsible for the operation of a trustee, shall be subject to the administrative sanctions under Section 67, unless it can be proven that he has no involvement with the commission of offence by the trustee.

Section 72

One or several administrative panels shall be established, provided that each panel shall comprise no more than five persons appointed by the SEC.

The qualification of panelists and the procedure of appointment of panelists under the first paragraph shall be in compliance with the rules as specified in the notification of the SEC.

Section 73

The SEC Office shall gather the facts relating to the commission of an offence which falls under the administrative sanctions and shall also have the power to exercise an initial consideration in order to take any of the following actions:

- (1) if it is considered that the type of administrative sanctions to be imposed on such alleged person falls within the SEC Office's authority, the SEC Office shall consider the imposition of such sanction;
- (2) if it is considered that the type of administrative sanctions to be imposed on such alleged person falls within the authority of the administrative panel or the SEC, the SEC Office shall refer such matter to the administrative panel or the SEC, as the case may be, to consider the imposition of such sanction.

Section 74

In the ordering of an administrative sanction, the competent authority shall take into consideration the circumstantial factors constituting the action, damage resulted from such action together with level of the sanction to be imposed on the subjected person in accordance with the rules as specified in the notification of the SEC.

Section 75

Subject to the Administrative Procedure Act, the consideration and the issuance of the administrative sanction order shall comply with the rules as specified in the notification of the SEC.

Section 76

Any trustee, director, manager or person responsible for the operation of trustee shall have the right to file an appeal with the SEC against the administrative sanctions ordered by the SEC Office or the administrative panel within thirty days from the date when such order is received, the procedure of which shall be in accordance with the rules as specified in the notification of the SEC.

The consideration and adjudication of appeals under the first paragraph shall be made in accordance with the rules as specified in the notification of the SEC.

The appeal under the first paragraph shall in no way suspend the execution of the administrative sanctions ordered by the SEC Office or the administrative panel.

The contest against the administrative sanction order or adjudication of the SEC shall be filed with the Administrative Court of First Instance.

Division 2 Criminal Sanction

Section 77

Any person undertaking business in a manner similar to trust business without obtaining approval under Section 54 shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding one million Baht or both and a further fine not exceeding ten thousand Baht for every day during which the contravention continues.

Section 78

Any person, without obtaining approval for operating trust business, using name, describing or advertising itself as a trustee or any other word of the same meaning shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding three hundred thousand Baht or both and a further fine not exceeding ten thousand Baht for everyday until such person discontinues such acts, unless the person has the right to use such name, description or advertisement under other Acts.

Section 79

Any person who contravenes or fails to comply with the administrative sanctions under Section 67 (4) or (5) shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht or both and a further fine of ten thousand Baht for every day during which the contravention continues.

Section 80

Any person who gives false testimony to the competent officer, if the false testimony is material to the investigation or the proceeding under this Act, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht, or both.

If a person gives false testimony to the competent office is a trustee, director, manager or any person responsible for the operation of such trustee shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two hundred thousand Baht, or both unless it can be proven that such person has no involvement with the commission of such offence.

Section 81

Any person who obstructs or fails to comply with the order of or fails to give assistance to the competent officer who executes his duty under Section 62 shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht, or both.

Where the actions under the first paragraph amount to use of violence or a threat to use violence, such person shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding two hundred thousand Baht, or both.

Section 82

Any person who removes, damages, destroys or renders useless any seal or mark which the competent officer has stamped or affixed on any object in the execution of his duties under Section 62 as evidence for the attachment or the keeping of such object shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht, or both.

Section 83

Any person who damages, destroys, conceals, takes away or loses, or renders useless any property or document which the competent officer has attached, kept or ordered to be delivered as evidence under Section 62, and regardless of whether or not the competent officer would keep such property or document himself or would order such person or other persons to deliver or to keep it, shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand Baht, or both.

Section 84

An auditor under Section 59 who makes a false report shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding three hundred thousand Baht, or both.

Section 85

Any director, manager, staff, employee, agent or person appointed to manage a trust dishonestly fails to perform his duties and causes damage to trust property shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding two million Baht, or both.

Section 86

Any director, manager, officer, employee, agent or person appointed to manage a trust dishonestly misappropriates trust property for himself or a third party shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding two million Baht, or both.

Section 87

Any director, manager, officer, employee, agent or person appointed to manage a trust damages, destroys, causes depreciation in value or render useless any trust property shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding two million Baht, or both.

Section 88

Any director, manager, officer, employee, agent or person appointed to manage trust property commits, or permits another to perform, the following acts:

- (1) damage, destroy, alter, abridge or falsify accounts, documents or evidence relating to management of a trust;
- (2) make false entries or fail to enter any material statements into accounting sheets or documents relating to management of a trust;
- (3) keep incomplete, incorrect, out-of-date or inaccurate accounts; or
- (4) certify the correctness and completeness of the statement made under Section 26, which is false.

If the actions under the first paragraph are done or permitted to be done to deceitfully deprive a trustee or beneficiaries of their rightful benefits or to deceive any person, shall be liable to imprisonment for a term not exceeding ten years or a fine not exceeding two million Baht, or both.

Section 89

Any person who causes other persons to commit offences under Section 80, Section 81, Section 82, Section 83, Section 84, Section 85, Section 86, Section 87 or Section 88 whether by way of instruction, force, threat, employment, aiding or abetting, or by any other means, shall be liable to the penalties as provided in such provisions.

Section 90

Any person who does any act to assist or facilitate other persons to commit offences under Section 80, Section 81, Section 82, Section 83, Section 84, Section 85, Section 86, Section 87 or Section 88, whether before or at the time of the commission of the offences, and even though the person committing the offences is not aware of such assistance or facilitation, shall be liable to the penalties as provided in such provisions.

Section 91

In performing the audit work on the account of a trustee, either as the appointed auditor of a trustee or as a person allowed to conduct the audit work of trustee, if the auditor discovers any suspicious circumstance that any director, manager, officer, employee, agent or person appointed to manage trust property has committed an offence under Section 85, Section 86, Section 87, or Section 88, the auditor shall notify the SEC Office of the circumstance of such offence.

Any auditor who contravenes or fails to comply with the first paragraph shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht, or both.

Section 92

Any person, who learns of the information of another person in the execution of his power or the performance of his duty under this Act which is confidential information or which should not be disclosed under normal circumstances and discloses such information to another person, shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand Baht, or both.

The provision of the first paragraph shall not apply to disclosure in the following cases:

- (1) disclosure in the execution of his power or the performance of his duty;
- (2) disclosure for the purpose of investigation or trial;
- (3) disclosure relating to the commission of offences under this Act;
- (4) disclosure for the purpose of rectifying the condition or operation of a trustee;
- (5) disclosure to an auditor of a person approved to undertake trust business;
- (6) disclosure to the authority or the related domestic and international agency as approved by the SEC Office;
- (7) disclosure upon written consent from the person who is the owner of such information or the person who has the power to disclose.

Any person, who learns of the information by means of disclosure under subsection (1), (2), (3), (4), (5), (6) and (7) of the second paragraph which is confidential information or which should not be disclosed under normal circumstances and discloses such information to another person, shall be liable to the penalties as provided in the first paragraph, unless it is the disclosure under the second paragraph.

Division 3
Statute of Limitation and Settlement Committee

Section 93

The statute of limitation of any offences under this Division which is subject to the administrative sanctions shall be expired, should there be no administrative sanction order within one year from the date when the competent officer determines that such offences have been committed or within five years from the date of commission of such offence.

Section 94

For the offences under Section 78, the first paragraph of Section 80, the first paragraph of Section 81, Section 84 and the second paragraph of Section 91 which do not severely affect a trust, or of which the affected beneficiary is satisfied with the remedy provided by the wrongdoer, the Settlement Committee appointed by the Minister under the Securities and Exchange Act shall have the power to settle such offences in accordance with the rules as specified in the notification of the SEC.

When a case has been settled by the Settlement Committee and the alleged person has paid the fine as determined by the Settlement Committee within the period of time so specified, the right to bring a criminal lawsuit on ground of such offences against such alleged person shall be ceased.

Countersigned by

General Surayuth Julanont

Prime Minister

Remark: The reasons for the promulgation of this Act are as follows: At present, the forms and methods of fund raising to undertake transactions in the capital market in Thailand are restricted. Such condition is an obstacle to the development of the capital market. It is, therefore, expedient to use the legal principle of trust as another instrument to make fund raising efficient and avoid problems that may arise from such action. It is thus necessary to enact this Act.

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