

Emergency Decree on Financial Sector Restructuring, B.E. 2540 (1997)

Translation

Principle

To enact a law on restructuring the financial sector.

Rationale

Whereas it is deemed necessary to urgently resolve the crisis in the financial sector and rehabilitate certain troubled financial institutions which are unable to continue normal business, and protect depositors and creditors of financial institutions in order to regain confidence in the financial system;

And whereas it is expedient to introduce internationally accepted measures to systematically address the financial institution problems through the establishment of a state agency with the duty to implement these measures, the purpose being to rehabilitate financial institutions and to assist bona fide depositors and creditors of financial institutions;

And whereas this is a situation which must be urgently addressed in order to preserve the economic stability of the country;

Now therefore, this Emergency Decree is enacted.

BHUMIBHOL ADULYADEJ, REX.

Given on the 22nd day of October B.E. 2540;

Being the 52nd Year of the Present Reign

By Royal Command of His Majesty King Bhumibhol Adulyadej, it is hereby proclaimed that:

Whereas it is deemed necessary to pass an Emergency Decree to restructure the financial sector;

Be it therefore enacted by the King under powers conferred by Section 218 of the Constitution of the Kingdom of Thailand, as follows:

Section 1

This Emergency Decree shall be called the "Emergency Decree on Financial Sector Restructuring, B.E. 2540 (1997)"

Section 2

This Emergency Decree shall come into force on and from the next day after its publication in the Government Gazette.

Section 3

In this Emergency Decree:

"Authority" means the Financial Sector Restructuring Authority.

"Financial Institutions" means:

- (1) commercial banks under the Commercial Banking Act;
- (2) finance companies, finance and securities companies or credit foncier companies under the Law on the Undertaking of Finance Business, Securities Business and Credit Foncier Business.

"Fund" means the Financial Institutions Development Fund under the Bank of Thailand Act.

"Suspended Companies" means any finance companies or finance and securities companies, the operations of which were suspended by the Minister of Finance on 26 June B.E. 2540 or 5 August B.E. 2540 by virtue of powers under the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business;

"Depositors" mean depositors of all types of the Suspended Companies, including holders of promissory notes issued for the purpose of borrowing or receiving money from the public;

"Creditors" means other creditors of the Suspended Companies who are not depositors and whose debt was incurred from the company's financial activity;

"Board of Directors" means the Board of Directors of the Financial Sector Restructuring Authority;

"Director" means a Director of the Financial Sector Restructuring Authority;

"Secretary-General" means the Secretary-General of the Financial Sector Restructuring Authority;

"Minister" means the Minister having charge of the enforcement of this Emergency Decree.

Section 4

The Minister of Finance shall have charge and control of the execution of this Emergency Decree.

Chapter 1

The Financial Sector Restructuring Authority

Part 1

Establishment and Capital Fund

Section 5

There shall be constituted a "Financial Sector Restructuring Authority" as a juristic person, abbreviated as "FRA".

Section 6

The Authority shall have its headquarters in Bangkok.

Section 7

The purpose of the Authority shall be to deal with finance companies and finance and securities companies whose operations were suspended by the order of the Minister of Finance on 26 June B.E.2540 and 5 August B.E.2540, by virtue of powers under the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, within the following framework:

- (1) rehabilitating Suspended Companies;
- (2) assisting bona fide depositors and creditors of Suspended Companies;
- (3) administering the liquidation process of Suspended Companies whose operations are no longer viable.

Section 8

The Authority shall have the power to undertake any activities within the framework of Section 7, including to:

- (1) hold ownership or possessory rights or any real rights, build, buy, acquire, sell, dispose of, hire, lease, hire-purchase, lease under a hire-purchase agreement, borrow, lend, accept pledges, accept mortgages, exchange, transfer, accept transfer of, or engage in any act concerning assets, within or outside the Kingdom, including to accept money or assets from donors;
- (2) hold deposits at Financial Institutions as deemed necessary and appropriate by the Board of Directors;
- (3) purchase or discount or rediscount debt instruments or accept transfer of claims;
- (4) borrow money, with or without interest, issue bills, or debt instruments;
- (5) issue bonds;
- (6) lend to or invest in securities issued by the Government, State organizations or State enterprises;
- (7) undertake all business in connection with, or incidental to, the achievement of the purposes of the Authority.

Section 9

The capital of the Authority shall comprise:

- (1) Initial capital which is assigned to it by the State as a grant;
- (2) Moneys and properties given by donors;
- (3) Moneys and properties devolved on the Authority; and
- (4) The Authority's earnings from its properties.

Section 10

The initial capital of the Authority shall be 500 million Baht, which sum shall be assigned to it by the State.

In any accounting period, if a loss is incurred by the Authority, the State shall provide appropriate financial assistance.

Part 2

Board of Directors and Operations

Section 11

A Board of Directors shall be established, called "the Board of Directors of the Financial Sector Restructuring Authority", comprising a Chairman, one representative of the Bank of Thailand, one representative of the Ministry of Finance, and two eminent persons appointed as Directors. The Secretary-General shall be a Director and secretary to the Board of Directors.

The Chairman and Directors who are eminent persons from the private sector shall be appointed by the Minister with the approval of the Cabinet.

The provision of Section 5 (2) of the Act on Standard Qualifications of Board Members and Officers of State Enterprises, B.E. 2518 shall not be applied to the position of the Chairman and Directors who are eminent persons.

Section 12

Any person with any of the following prohibited characteristics shall not be appointed as a Director who is an eminent person.

- (1) being or having been declared bankrupt;
- (2) having been sentenced to imprisonment by a final court judgment, unless such punishment is for an offense done in negligence or for a petty offense;

- (3) being a government official in political services or advisor or executive director or official of any political party;
- (4) being a director or an executive or a person with authority to manage a financial institution; or
- (5) being or having been a borrower whose loan has been classified by financial institutions in accordance with rules prescribed by the Bank of Thailand.

Section 13

Directors who are eminent persons shall hold office for a term of three years.

If an eminent Director vacates his office prior to the expiration of his term of office, the replacement Director shall retain office for the duration of the remaining term of the existing Director.

Upon expiration of the term of office mentioned in the first paragraph, a retiring Director shall retain office and conduct duties until a new eminent Director takes charge of his duties.

A retiring eminent Director shall be eligible for re-appointment, but for no more than two consecutive terms.

Section 14

Besides retiring from office on expiration of the term of office under Section 13, any eminent Director shall vacate his office when he:

- (1) dies;
- (2) resigns;
- (3) is ordered by the Minister to leave due to dereliction of duty or dishonesty or incompetence;
- (4) is declared bankrupt;
- (5) is adjudged incompetent or quasi-incompetent;
- (6) is sentenced to imprisonment by a final judgment, unless such punishment is for an offense done in negligence or for a petty offense.

Section 15

For a meeting of the Board of Directors, a quorum shall comprise not less than half of the Directors. If the Chairman is not present at the meeting, the Directors present at the meeting shall elect one of their members to be the chairman of the meeting.

Decisions shall be taken by majority vote, each Director having one vote. In the case of a tie, the Chairman of the meeting shall be entitled to cast an additional vote.

A Director who has a personal interest in any matter shall not be entitled to attend the meeting and vote on that issue.

Section 16

The Board of Directors shall have the authority and duty to lay down policies and take general control and superintendence of the affairs of the Authority under Section 7. Such authority shall include the following matters:

- (1) issuing criteria for submission and considering Suspended Companies' rehabilitation plans;
- (2) issuing guidelines to assist bona fide depositors and creditors of Suspended Companies;
- (3) issuing procedures for liquidation and sale of assets of unviable Suspended Companies;
- (4) issuing regulations on personnel management, remuneration and expenses;
- (5) issuing regulations on purchasing, hiring, finance, properties and accounting, and also auditing and internal audit;

- (6) issuing regulations on administration and operations;
- (7) carrying out any other matters in order to achieve the purposes of this Emergency Decree.

Criteria and guidelines under (1) and (2) shall be made public.

Section 17

The Minister shall have the power to appoint and remove the Secretary-General with the approval of the Cabinet.

The Secretary-General must work full-time for the Authority and must not possess any of the prohibited characteristics described in Section 12.

The provision of Section 9 (2) of the Act on Standard Qualifications of Board Members and Officers of State Enterprises, B.E. 2518 shall not be applied to the position of the Secretary-General.

Section 18

The Secretary-General shall have power and duty to administer the affairs of the Authority in accordance with the purposes and responsibilities of the Authority, and in accordance with the policies or regulations issued by the Board of Directors.

The Secretary-General shall be the representative of the Authority in regard to the Authority's external affairs and in this respect, the Secretary-General may, in accordance with regulations prescribed by the Board of Directors, specifically authorize a representative or any person to act on his behalf.

Section 19

The Chairman and Directors shall receive remuneration as determined by the Minister.

Section 20

The Authority's funds shall be used only in accordance with the purposes of the Authority and as expenses for managing the Authority, as determined by the Board of Directors, including for remuneration related to this chapter.

Chapter 2

Resolution of Suspended Companies

Section 21

The Authority shall have the duty to resolve the Suspended Companies in accordance with the provisions under this chapter.

Section 22

Suspended Companies shall present their rehabilitation plans to the Board of Directors for approval.

Section 23

For the purpose of rehabilitating Suspended Companies, the power to grant permission, waivers or approvals under the Law on the Undertaking of Finance Business, Securities Business and Credit Foncier Business in the following cases, as the case may be, shall be vested in the Board of Directors:

- (1) acquisition of Financial Institution shares above the legal limit;
- (2) the amount of shares of Financial Institutions held by Thai citizens below three-fourths of total shares sold by such institutions and the number of Thai directors below three-fourths of the total number of directors;
- (3) acquisition or holding of shares in a company limited or public company limited above the legal limit;

- (4) acquisition or holding of shares in other Financial Institutions; and
- (5) appointment of director, manager or staff or person with authority to act on behalf of Financial Institutions, or contracting to grant any person absolute authority in administering a Financial Institution.

Section 24

The Board of Directors shall consider a rehabilitation plan of a Suspended Company and shall render its approval or disapproval of such plan without delay.

In the consideration of a rehabilitation plan of a Suspended Company, the Board of Directors shall also ascertain that such Suspended Company maintains sufficient capital funds in proportion to assets, liabilities, or contingent liabilities in accordance with the guidelines prescribed by the Board of Directors and that it displays the ability and commitment to maintain the said capital ratio for a three-year period.

Upon approval of the plan in the first paragraph, the Board of Directors may specify a time-frame or any conditions for such company to observe.

Section 25

For the purpose of rehabilitating Suspended Companies, the Board of Directors shall have the power to order the Company to write down capital, increase capital and allocate increased capital, improve management, dismiss and appoint directors, management or persons responsible for the operation of the company, or to order the merger, transfer or accepting transfer, in total or in part, with other financial institutions, or transfer contractual claims and collateral or transfer assets, or issue any other orders related to the rehabilitation. The Board of Directors may specify a time-frame and any other conditions. Such order by the Board of Directors shall be deemed a resolution of the shareholders' meeting.

Where a Suspended Company must follow the order of the Board of Directors prescribed in the first paragraph, the company and related Financial Institutions shall, during the time-frame between the Board of Directors approving the company's rehabilitation plan and the Authority's final liquidation date as stated under Section 43, be exempted from the following laws;

- (1) the provisions of the Commercial Bank Act, B.E. 2505 and the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, B.E. 2522 concerning the requirement that a Financial Institution be a public company limited and the determination of the minimum registered and paid-up capital, as the case may be;
- (2) Section 237, Section 1117, Section 1220, Section 1222, Section 1224, Section 1225, Section 1226 and Section 1240 of the Civil and Commercial Code;
- (3) Section 50, Section 52, Section 102 in conjunction with the second paragraph of Section 33, Section 137, Section 139, Section 140, Section 141, Section 147 and Section 148 of the Public Company Limited Act, B.E. 2535;
- (4) Section 85 of the Public Company Limited Act, B.E. 2535 in the specific part related to actions in compliance with resolutions of shareholders meetings and protection of the company's interest;
- (5) Section 94(2), Section 113, Section 114 and Section 115 of the Bankruptcy Act, B.E. 2483 in the specific part related to transfer of properties or any activities pertaining to properties in the case of merger or transfer of ownership.

In the case where there is a need to exercise rights through the medium of a court against Suspended Companies or related Financial Institutions under the second paragraph, the period of time which the companies or financial institutions are exempted from the provisions of the laws according to the second paragraph does not count for prescription for claims.

Section 26

No person shall file bankruptcy proceedings against Suspended Companies and related Financial Institutions during the time a rehabilitation plan approved by the Board of Directors is being implemented.

Section 27

Transfer of claims, in total or in part, of a Suspended Company to other Financial Institutions may be done without giving notice thereof to the debtors as prescribed in Section 306 of the Civil and Commercial Code. This does not, however, affect the debtors' rights to set up a defense under the second paragraph of Section 308 of the Civil and Commercial Code.

Section 28

In performing its duties, the Board of Directors is empowered to order any director, officer, employee or auditor of any Suspended Company and any person who is responsible for collecting and processing the data of such company either by employing the use of computers or other instruments, to testify or reproduce or deliver the actual books of accounts, documents, seals or other evidences relating to the affairs and assets and liabilities of such company.

Section 29

In the case where the Board of Directors considers that the Suspended Company under resolution by the Authority has follow its rehabilitation plan such that it will be able to resume business on its own, or merge or transfer its assets to another Financial Institution according to the rehabilitation plan, the Board of Directors shall so report to the Minister.

In the case where the Board of Directors considers that a Suspended Company is able to resume business, and if the Minister of Finance, upon the recommendation of the Bank of Thailand, deems it appropriate to allow the Suspended Company to resume business, the Minister shall issue an order to allow the Suspended Company to do so.

When the Suspended Company under the first paragraph resumes its business, or merges or transfers its assets to other Financial Institutions, the powers and duties of the Authority shall cease, with respect to that company.

Section 30

In the case where the Board of Directors considers that a Suspended Company is unable to restructure or rehabilitate its condition or business, the Authority shall report to the Minister and the Board of Directors shall be empowered to set up a committee comprising a chairman and no less than two other members, which shall have the power and duty to assume control of such company and to liquidate the company's assets. The Chairman of the committee shall represent the company. Such action shall be deemed a resolution of a shareholders meeting.

When the committee under the first paragraph has been established, the Secretary-General shall notify the Suspended Company in writing and all existing directors of that company shall be removed. Such removal shall be deemed a resolution of a shareholders meeting. The appointment of the committee shall be posted in an open space at the office of such company and also be published in the Government Gazette and at least one daily newspaper.

The chairman of the committee may assign one or more members of the committee or any other persons to act on behalf of such company or the committee in any matter.

For purposes of carrying out the committee's action under the first paragraph, any rights or powers vested in a shareholders' meeting in accordance with the Civil and Commercial Code or the Public Company Limited Act shall be vested in the Minister.

Sale of the Suspended Company's assets for liquidation purpose shall be done by open bidding process or price competition as determined by the committee. The Authority shall receive a fee of one percent of the sale price.

The committee shall be empowered to appoint a liquidator and any action under the power and duty of the shareholders' meeting shall be vested in the Minister.

Section 31

Where the Authority wishes to have information about the operation of a Financial Institution in order to fulfill its duties under this Emergency Decree, the Bank of Thailand, the Securities and Exchange Commission, and the Stock Exchange of Thailand shall provide information on such Financial Institution to the Authority. The provisions of Section 46 septem of the Commercial Banking Act, B.E. 2505, and Section 77 of the Act on the Undertaking of Finance Business, Securities Business, and Credit Foncier Business, B.E. 2522 shall, as the case may be, not apply.

Section 32

In rehabilitating a Suspended Company, the Authority may request the Fund to acquire shares of any such company only in order to maintain the stability of the country's payment system and after such company has written down capital against its losses, and the company is unable to sell shares within an appropriate time-frame.

For the purpose of rehabilitation, the Authority may request the Fund to acquire shares in a Suspended Company only in the following cases:

- (1) the Suspended Company has recognized its losses and maintained loan loss provisions as set by the Authority;
- (2) shareholders' equity of the Suspended Company on the day the Authority takes control of the Company has been reduced to the lowest level allowed by law;
- (3) where the shareholders take up shares of the Suspended Company, such shareholders acting alone or in concert shall not hold shares above the level said by the Authority to allow controlling interest;
- (4) the Fund shall acquire no more shares than that acquired by other shareholders.

Section 33

In the event that the Fund must provide financial assistance to a Suspended Company as requested by the Authority and incurs any loss, the Government shall provide financial assistance to the Fund as appropriate.

Chapter 3

Accounting and Auditing

Section 34

The Authority shall establish and maintain a proper accounting system and shall arrange a system of control and internal audit.

Section 35

The Authority shall prepare balance sheets and income statements for each six-month period.

Section 36

The Minister shall be empowered to appoint the Office of the Auditor-General of Thailand or other persons deemed appropriate as the auditor of the Authority. The auditing of accounts and finances shall be undertaken every six months.

Section 37

The Authority shall report to the Minister regarding its operation, balance sheet and income statement certified by the auditor in Section 36, within three months from the end of the accounting period. The balance sheet and income statement shall be made public by the Minister.

Section 38

In the case that the Authority requests the Ministry of Finance to guarantee its borrowings either from domestic or international sources, the Ministry of Finance shall be empowered to guarantee such loan. But the amount to be guaranteed, when added to the outstanding amount of loans guaranteed by the Minister of Finance, notwithstanding the law authorizing such guarantee, shall not, when calculated in terms of Baht, exceed twelve times the Authority's capital fund.

In the conversion of foreign currency into Baht to assess the total borrowing in the first paragraph, the daily reference exchange rate announced by the Bank of Thailand on the date the borrowing agreement is signed shall be applied.

Chapter 4 Punishment

Section 39

Any person who discloses to other persons confidential information related to specific Financial Institutions acquired from performing duties under the Decree shall be subject to imprisonment of not more than one year or a fine of not more than one million Baht or both.

The first paragraph shall not apply to the following:

- (1) Disclosure in line with duty;
- (2) Disclosure for the benefit of investigation of a case or court proceedings;
- (3) Disclosure for the benefit of rehabilitation of a Suspended Company;
- (4) Disclosure with written approval from the Financial Institution.

Section 40

Whoever fails to comply with the Authority's order issued under Section 28 shall be liable to a fine not exceeding 100,000 Baht and a further fine of not exceeding 3,000 Baht per day during the period in which such failure continues or until compliance.

Chapter 5 Dissolution of the Authority

Section 41

When the Authority has completed its duties with respect to the rehabilitation of Suspended Companies, the Board of Directors shall report to the Minister to recommend to the Cabinet that the Authority be dissolved.

Section 42

Upon Cabinet's approval to dissolve the Authority, the Authority shall be liquidated by a committee appointed by the Minister as the Authority's liquidation committee.

Such liquidation shall be subject to the provision regarding liquidation of limited corporations specified in the Civil and Commercial Code.

Section 43

Upon completion of its work, the liquidation committee shall submit its report to the Minister for approval and Cabinet's acknowledgment and publication in the Government Gazette. The date of publication in the Government Gazette shall be deemed the final liquidation date, and the Authority dissolution date.

Any remaining assets of the Authority shall be transferred to the Ministry of Finance after the final liquidation date.

The liquidation committee shall submit books, accounts, and all documents of the Authority to the Ministry of Finance within fourteen days from the final liquidation date, such to be kept by the Ministry of Finance for ten years.

Books, accounts and documents in paragraph three shall be disclosed, for the purpose of examination, to parties with vested interest without any charge.

Transitional Provisions

Section 44

All guidelines and conditions set by the Minister, the Bank of Thailand or the Committee to Supervise the Merger or Transfer of Financial Institutions appointed by the order of the Ministry of Finance that applies to Suspended Companies shall remain in effect until further change.

All rehabilitation plans submitted by the Suspended Companies to the Committee to Supervise the Merger or Transfer of Financial Institutions shall be deemed rehabilitation plans under Section 22.

Countersigned by

General Chavalit Yongchaiyudh

Prime Minister

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