

Emergency Decree on Asset Management Company, B.E. 2540 (1997)

Translation

Principle

To enact a law on the Asset Management Company.

Rationale

Whereas it is deemed that in order to resolve non-performing asset problems of financial institutions and to expedite the capital increase process of financial institutions which enhance the capability to grant additional loan to the economic sector, it is necessary to separate non-performing asset and sell off or transfer to other juristic person to continue managing those non-performing asset by establishing Asset Management Company.

And whereas it is deemed that in order to encourage the foundation of a juristic person it is necessary to provide the benefit for fee and tax exemption that comes from selling off or transferring asset from financial institutions to juristic person and to establish law specifying benefit of that juristic person.

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 August B.E. 2541;

Being the 53rd Year of the Present Reign

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

Whereas it is deemed appropriate to enact an Emergency Decree on the Asset Management Company;

Be it, therefore, enacted by His Majesty the King, by virtue of Section 218 of the Constitution of the Kingdom of Thailand, as follows:

Section 1

This Emergency Decree shall be called the "Emergency Decree on the Asset Management Company, B.E. 2541 (1998)".

Section 2

This Emergency Decree shall come into force on and from the day following the date of its publication in the Government Gazette.

Section 3

In this Emergency Decree:

"Asset Management" means:

- (1) The purchasing or receiving transfer of non-performing assets, or collateral thereof, of a financial institution in order to manage the purchased asset and subsequently sell them off.
- (2) Other activities in connecting with or incidental to the activity mentioned in the first item, which is announced by the Minister with the approval of the Cabinet.

“Non-performing asset” means that the asset of a financial institution which the Bank of Thailand defines it as non-performing asset that can be sold off to asset management company.

“Financial Institution” means:

- (1) commercial banks under the Commercial Banking Act;
- (2) finance companies, finance and securities companies or credit foncier companies under the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business;
- (3) Other juristic person that the Minister announced and published in the Government Gazette.

“Limited Company” means limited company under the Civil and Commercial Code or public limited company under the law relating to Public Limited Company.

“Asset Management Company” means limited company registered under this Emergency Decree.

“Minister” means the Minister having charge of the enforcement of this Emergency Decree.

Section 4

With the approval of the Governor of the Bank of Thailand, a limited company can be registered to be the asset management company and pay the registration fee under the mentioned rate in the account at the end of this Emergency Decree.

Rules and procedures for registration request and registration acceptance shall be subscribed by Ministerial Regulations.

The registered asset management company shall undertake all businesses of asset management in accordance with rules prescribed by the Bank of Thailand.

Section 5

According to the undertaking of asset management, if the asset management company issues securities or lends the money, the rules shall be prescribed by the Bank of Thailand.

In the case that the administration of the asset management company mentioned in the first paragraph undertakes the businesses of finance companies or credit foncier companies, the asset management company can undertake those businesses without involving in the enforcement under the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business.

Section 6

In transferring assets of financial institutions to asset management company, if collateral of assets are not mortgages right, pledges right, or other right from the guarantee, the asset management company will hold those collateral as well.

Section 7

In transferring assets from financial institutions to asset management company, if there is a litigation for enforcement of claim in court, the asset management company shall be substituted for the financial institution, may bring new evidence to object the previous documents, reinvestigate contradictorily the witnesses, and oppose the evidence that has already been investigated. In case that the court has a judgment to have an enforcement of the claims, the asset management companies shall be substituted as creditors in accordance with that judgment.

Section 8

In transferring assets from financial institutions to asset management companies, the asset management companies as well as financial institutions shall be exempted from any fees and taxes which incur from asset transfer, in total or in part. The fee and taxes exemption shall be specified either as a common practice or as a case by case basis by the Cabinet and published in the Government Gazette.

Section 9

In transferring assets considered as claims from financial institutions to the asset management companies, if the asset management companies assign the originators to be the servicing agents, those transfer shall be legally accepted without giving notice thereof to the debtors as required under Section 306 of the Civil and Commercial Code. This does not, however, affect the rights of the debtors to set up a defense under the second paragraph of Section 308 of the Civil and Commercial Code.

Servicing agents under the first paragraph are responsible for maintaining books of accounts and debtors' lists of which their assets have been transferred as a separate book of account. The debtors shall have the right to check their debtors' lists.

In case where the servicing agents are not the originators, the asset management companies shall give notices concerning the claim transfers to the debtors since the date of changing the servicing agents.

In case where there is an urgent need to maintain the stability of the financial institution system such that the delay may cause damage to public interest, the transfer notices under the third paragraph could be done by announcing the lists including appropriate details through the Internet and through at least one widely accepted daily newspaper for at least three days. This shall be treated as the transfer notices under Section 306 of the Civil and Commercial Code.

Section 10

In transferring assets from financial institutions to asset management companies, the asset management companies shall charge the debtors under the original contracts with the interest rate not exceeding the rate specified in the original contracts on the date of receiving transfers. However, if floating interest rate was specified in the original contract and the reference in which the original financial institution use in calculating the interest rate was not specified, the interest rate charged shall be calculated according to the Bank of Thailand's guideline.

Where the asset management companies lend additional fund to the debtors under the original contracts in order to increase value of the assets received, the asset management companies shall be able to charge interest rate as agreed by both parties.

Section 654 of the Civil and Commercial Code shall not be applied in handling according to the first and second paragraphs. However, the interest rate charged shall not exceed the rate announced by the Bank of Thailand.

Section 11

Asset management companies shall prepare the books of accounts which completely and accurately exhibit current value of all assets and liabilities according to the Accounting Standard and as prescribed by the Bank of Thailand.

The Bank of Thailand is empower to require any asset management company to submit report or disclose any document either periodically or occasionally as specified by the Bank of Thailand, and to prepare an explanation to clarify the said report and document.

Section 12

The Governor of the Bank of Thailand shall have a power to terminate the registration of asset management companies as there is evidence or as one of the following situations occur.

- (1) Asset management companies do any act which is considered as wrong doing or may cause damage to public.
- (2) Asset management companies neglect to follow the law.
- (3) Asset management companies violate or do not follow guideline for operation as described in ministerial regulations or as specified by the Minister or the Bank of Thailand in this Emergency Decree.
- (4) Other cases where the Minister, with recommendation of the Bank of Thailand, deems necessary.

As the registration has been terminated under the first paragraph, asset management in which its registration is terminated shall no longer have a right to obtain benefit from operating the asset management companies under this Emergency Decree since the date of termination.

Section 13

Any asset management companies which report untrue transactions in their books of accounts, adjust the books of accounts or document relevant to accounting in order to distort the truth, neglect to record transactions in books of accounts, fail to prepare books of accounts to exhibit assets and liabilities described in the first paragraph of Section 11, fail to submit report, document, and explanation required by the Bank of Thailand, or disclose the untrue expressions under the second paragraph of Section 11 shall be liable to a fine not exceeding Baht 300,000.

In case where any asset management companies shall be liable to imprisonment for a term not exceeding Baht 300,000, or both, unless he can prove that he had no part in the commission of such offense of the asset management companies.

Section 14

Board members, managers, or any persons responsible for the operation of asset management companies who do the act or do not do the act to seek undeserved benefits legally for themselves or others which cause damage to the asset management companies shall be liable to imprisonment for five to ten years or a fine of Bath 300,000 to Bath 1,000,000.

Section 15

The Minister of Finance shall have charge and control of execution of this Emergency Decree and shall have a power to issue ministerial regulations or announcement to accommodate this Emergency Decree.

The ministerial regulations and announcement shall come into force after their publications in the Government Gazette.

Countersigned by

Mr. Chuan Leekpai

Prime Minister

Registration fee rate

Registration fee 100,000 Baht.

Disclaimer

This translation is intended to help Thais or foreigners to understand Thailand laws and regulations only, not to use as references, because it is only the original Thai version of legislation that carries legal effect. www.ThaiLaws.com, therefore, shall not be held responsible in any way for any damage or otherwise the user may incur as a result of or in connection with any use of this publication for any purposes. It's the responsibility of the user to obtain the correct meaning or interpretation of this publication or any part thereof from Thai version or by making a formal request to the appropriate or related authorities.