

**Emergency Decree on the Asset Management Corporation, B.E. 2540 (1997)**

Translation

**Principle**

To enact a law on the Asset Management Corporation.

**Rationale**

Whereas it is deemed that in order to resolve the crisis in the financial system and to rehabilitate some troubled financial institutions by establishing a state agency which is responsible for the systematic implementation of such measures in accordance with international practice, it is necessary to establish an Asset Management Corporation to administer impaired assets of such financial institutions, as part of the financial sector restructuring program.

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 22<sup>nd</sup> day of October B.E. 2540;

Being the 52<sup>nd</sup> 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 Corporation;

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 Corporation, B.E. 2540 (1997)".

**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:

"Corporation" means the Asset Management Corporation;

"Financial Institutions" 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;

"Fund" means the Financial Institutions Development Fund under the Bank of Thailand Act, B.E. 2485;

"Authority" means the Financial Sector Restructuring Authority under the Emergency Decree on Financial Sector Restructuring;

"PLMO" means the Property Loan Management Organization under the Royal Decree on the Property Loan Management Organization B.E. 2540;

"Capital funds" means initial capital of the Corporation under Section 9, money derived from the increase in capital under Section 10, reserves and net profits after appropriation, from which shall be deducted losses incurred in all previous accounting periods;

"Board of Directors" means Board of Directors of the Asset Management Corporation;

"Director" means Director of the Asset Management Corporation;

"Manager" means Manager of the Asset Management Corporation;

"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**

#### **Establishment and Capital Funds**

#### **Section 5**

There shall be constituted a corporation to be called the "Asset Management Corporation", abbreviated as "AMC", as a juristic person.

#### **Section 6**

The Corporation shall have its headquarters in Bangkok.

#### **Section 7**

The purposes of the Corporation shall be as follows:

- (1) to administer the business of purchasing or receiving transfer of all types of assets, or collateral thereof, of any finance companies or finance and securities companies, whose operations were suspended by the Orders of the Minister of Finance dated 26 June B.E. 2540 and 5 August B.E. 2540 by virtue of the Act on the Finance Business, Securities Business and Credit Foncier Business, whose operations the Authority considers unable to rehabilitate; or from PLMO. AMC shall manage the purchased asset and subsequently sell them off.
- (2) to administer the business of purchasing or receiving transfer of impaired assets, with interest past due for 3 months or more of any Financial Institutions which the Fund has acquired shares and assumed control over the management thereof.

#### **Section 8**

Subject to the purposes of the Corporation as stated in Section 7, the Corporation shall be empowered to undertake the following:

- (1) hold ownership or possessor rights or any real rights, build, buy, acquire, sell, dispose of, hire, lease, hire-purchase, lease out a hire-purchase agreement, borrow, lend, accept pledges, accept mortgages, exchange, transfer, accept transfer of, or engage in any act concerning related assets within and outside the Kingdom, including to accept donated money or properties from donors;
- (2) issue guarantee, acceptance, aval, or intervene for the honor of bills;
- (3) charge interest, discounts, fees and other related financial service charges;
- (4) borrow from both domestic and international markets;

- (5) issue debentures, bills, or any debt instruments;
- (6) invest in securities issued by the Government, State organizations or State enterprises;
- (7) hold deposits at Financial Institutions as deemed necessary and appropriate by the Board of Directors;
- (8) undertake all other businesses in connection with or incidental to the achievement of the purposes of the Corporation.

### **Section 9**

The capital of the Corporation shall be set at ten million shares, valued at one hundred Baht per share, totaling a capital of 1,000 million Baht. Such initial capital shall be subscribed by the Government and the Ministry of Finance shall be the shareholder.

### **Section 10**

In the case where the Corporation incurs losses causing its capital fund to be lower than ten percent of total assets, the Corporation shall undertake a capital increase.

The capital increase of the Corporation shall be raised by the issuance of new shares, with the approval of the Cabinet.

The Corporation shall offer to the public or to any other persons to subscribe to the shares under the second paragraph according to the time frame, procedures and amount prescribed by the Corporation. The Corporation shall arrange the issuance of such shares.

### **Section 11**

Money used as working capital shall comprise:

- (1) capital funds of the Corporation;
- (2) funds borrowed from domestic and international markets;
- (3) income of the Corporation; and
- (4) funds donated.

## **Chapter 2**

### **Board of Directors of the Corporation and Operations**

### **Section 12**

There shall be constituted a Board of Directors, called the "Board of Directors of the Asset Management Corporation", comprising a Chairman and six other Directors appointed by the Minister, and a Manager who shall be Director and secretary.

In the case where there is a capital increase through public offering, changes of directorship shall be determined by shareholders' meeting.

The Chairman and other Directors shall not be subject to Section 5 (2) of the Act on Standard Qualifications of Board Members and Officers of State Enterprises, B.E. 2518

### **Section 13**

Persons with any of the following characteristics shall not be appointed as a Director:

- (1) being or having been declared bankrupt;
- (2) having been sentenced to imprisonment by a final judgment, unless such punishment is for an offense done in negligence or for a petty offense;
- (3) being a government official in political service or advisor or executive director or official of any political party;

- (4) being a director, 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 a Financial Institution in accordance with rules prescribed by the Bank of Thailand.

#### **Section 14**

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

If a Director vacates his office before the expiration of his term of office, the Director appointed to replace him shall retain office for the remaining term of the existing Director.

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

A retiring Director shall be eligible for re-appointment, but not for more than two consecutive terms.

#### **Section 15**

Besides retiring from office on the expiration of the term under Section 14, any 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 16**

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

#### **Section 17**

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 Corporation subject to its purposes in Section 7. Such authority shall include the following:

- (1) issuing regulations on personnel management, remuneration and expenses;
- (2) issuing regulations on purchasing, hiring, finance, properties and accounting, including auditing and internal auditing;
- (3) issuing regulations on administration and operations;
- (4) issuing rules concerning the appraisal of the assets and collateral which the Corporation will purchase or accept transfer;
- (5) approving the Corporation's budget.

#### **Section 18**

The Board of Directors shall have the power to appoint and remove the Manager with the approval of the Minister.

The Manager must work full-time for the Corporation and must not possess any of the prohibited characteristics described in Section 13.

Decisions on appointment or removal of the Manager under the first paragraph shall be made by a vote of not less than a three-fourths of the Board of Directors.

The Manager shall not be subject to Section 9 (2) of the Act on Standard Qualifications of Board Members and Officers of State Enterprises, B.E. 2518.

#### **Section 19**

The Manager shall have the power and duty to administer the affairs of the Corporation in accordance with its purposes and responsibilities, and in accordance with the policies or regulations determined by the Board of Directors.

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

#### **Section 20**

The Directors shall receive such remuneration as prescribed by the Minister.

#### **Section 21**

In purchasing or receiving transfer of assets of Financial Institutions, the Corporation may arrange to have valuation appraisal by juristic persons who are independent valuers or professional financial advisors. In this connection, due consideration shall be paid to future cash flow and the purchase or transfer value must not be higher than the market or central appraisal value.

#### **Section 22**

In performing duties of transferring and receiving transfer of assets, mortgage rights, pledges or other collateral, the Corporation and related persons shall be exempted from any fees as specified by the law related to the transfer and receiving transfer of such assets or collateral.

#### **Section 23**

The transfer, in total or in part, of the claims from financial institutions, the Authority or the PLMO to the Corporation and vice versa may be done 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.

### **Chapter 3**

#### **Supervision, Operation and Control**

#### **Section 24**

The general supervision of the affairs of the Corporation is vested in the Minister. In so doing, the Minister may order the Corporation to disclose information, give opinions, make reports, including order a fact-finding investigation related to the Corporation's operations.

#### **Section 25**

In the case that the Corporation requests the Ministry of Finance to guarantee loans borrowed from domestic or international sources, the Ministry of Finance shall be empowered to guarantee such loans. But the amount to be guaranteed, together with the outstanding amount of loans already guaranteed by the Ministry of Finance, when calculated in terms of Baht, shall not exceed twelve times the Corporation's capital fund, notwithstanding the law empowering such guarantee.

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

## **Chapter 4**

### **Allocation of Profit**

#### **Section 26**

The Corporation's profit, after subtracting accumulated loss shall be allocated as the Corporation's capital funds until its capital fund is not less than 25 percent of total assets. The balance may be allocated to shareholders and remitted to the State in proportion to capital participation as determined by the Cabinet.

## **Chapter 5**

### **Audit and Examination**

#### **Section 27**

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

#### **Section 28**

The Corporation shall prepare its balance sheet and profit and loss account for each 6-month period.

#### **Section 29**

The Minister shall be empowered to appoint the Office of the Auditor-General of Thailand or other persons as the auditor of the Corporation. The auditor shall audit the accounts including all finances and submit an audit report to the Minister.

#### **Section 30**

The Corporation shall submit to the Minister its annual report, balance sheet and profit and loss account as certified by the auditor under Section 29, within four months from the end of the accounting period. The Minister shall make public reports on such balance sheet and accounts.

Countersigned by  
General Chavalit Yongchaiyudh  
Prime Minister

#### **Disclaimer**

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