

**Royal Decree on the Establishing Software Industry Promotion
Agency (Public Organization), B.E. 2546 (2003)**

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 20th Day of September B.E. 2546;

Being the 58th Year of the Present Reign

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

Whereas it is expedient to establish the software industry promotion agency being public organization under the law on public organization;

By virtue of Section 221 of the Constitution of the Kingdom of Thailand and Section 5 of the Public Organization Act, B.E. 2542, the King hereby issues the Royal Decree as follows:

Section 1

This Royal Decree is called the "Royal Decree on the Establishing Software Industry Promotion Agency (Public Organization), B.E. 2546 (2003)".

Section 2

This Royal Decree shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

In this Royal Decree:

"Software" means instruction or data used in all computer systems;

"Software industry" means trading, manufacturing or providing service in relation to software whether directly or indirectly and without regard to its form and manner;

"Agency" means the Software Industry Promotion Agency;

"Board" means the Software Industry Promotion Board;

"Director" means the Director of the Software Industry Promotion Agency;

"Officer" means an officer of the Software Industry Promotion Agency;

"Employee" means an employee of the Software Industry Promotion Agency;

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

Section 4

The Minister of Information and Communication Technology shall have charge and control of the execution of this Royal Decree.

CHAPTER I

Establishment, Objectives and Powers and Duties

Section 5

There shall be established a public Organization called the "Software Industry Promotion Agency (Public Organization)", or the "Software Industry Promotion Agency (Public Organization)" in English; to be called "SIPA" in brief.

Section 6

The Agency shall have its head office in Bangkok or other *Changwat* and may establish its branch office domestically and abroad as the Board thinks fit.

Section 7

The Agency shall have the following objectives:

- (1) to be core agency for planning and determining policy for the development of software industry of the country to be compliant with the master plan for information and communication technology;
- (2) to promote software industry through giving support for the development of software industry of the country, developing personnel, market, investment, production process and provision of service to be in line with international standard, and giving recommendation on tax and other benefits to be offered as incentives for software industry investment to the Council of Ministers;
- (3) to provide support for the conduct of study and research and the transfer of technology and to determine rule, regulation and measure as necessary for the promotion of software industry;
- (4) to promote intellectual property protection for software;
- (5) to be major unit for coordination and solving problem of software industry through one-stop service.

Section 8

For the achievement of the objectives under Section 7, the Agency shall have the powers and duties as follows:

- (1) to have ownership, possessory right and real right;
- (2) to create right or engage any juristic act related to property;
- (3) to lend or borrow money for the benefit of any undertaking in accordance with its objectives;
- (4) to engage joint ventures with other persons or juristic persons in any undertaking relevant to its objectives;
- (5) to be agent or broker or to entrust or hire other persons or juristic persons to engage in any business in accordance with its objectives;
- (6) to collect fee, dues, consideration or service charge for its undertaking;
- (7) to provide coordination and cooperation with State and private Organizations or agencies, domestically and abroad, in any undertaking related to its objectives;
- (8) to carry out any act necessary for, or in connection with, the achievement of its objectives.

The borrowing of money under (3) and the engaging in joint ventures with other persons or juristic persons under (4) shall be in accordance with the rule laid down by the Council of Ministers.

CHAPTER II

Fund, Income and Property

Section 9

The fund and property to be used for the undertaking of the Agency consisting of:

- (1) money paid by the government as start-up fund;
- (2) general bounty in an amount the government thinks fit for the circumstance of each year;

- (3) subsidy from private sector or other Organizations and donated money or property;
- (4) fee, dues, consideration, service charge and income incurred in its undertaking;
- (5) fruit of money or benefit derived from its property.

The acceptance of money or property under (3) shall not be made in the manner that it may deteriorate an independence or impartiality of the Agency.

Section 10

In the case where the Agency provides any service within the scope of its objectives and powers and duties, the Agency shall have the power to collect fee, dues, consideration or service charge in return thereof at the rate laid down by the Board.

Section 11

All incomes of the Agency shall not be remitted to the Ministry of Finance under the law on treasury balance and the law on budgetary procedure.

Section 12

The ownership of all immovable properties which are donated to, or purchased by incomes of, the Agency shall devolve on the Agency.

The Agency shall have the powers to control, manage, maintain, utilize, dispose of and earn benefit from its properties.

Section 13

The spending of money of the Agency shall be made particularly for the undertaking of the Agency.

The keeping and disbursement of money of the Agency shall be in accordance with the regulations laid down by the Board.

CHAPTER III

Management and Business Undertaking

Section 14

There shall be a Board called the "Software Industry Promotion Board", or the "Software Industry Promotion Board" in English; to be called "SIPA" in brief, consisting of:

- (1) the Chairperson as appointed by the Council of Ministers from the person with highly apparent knowledge, skill and experience in management or in information and communication technology industry;
- (2) two *ex officio* members, viz., the Permanent Secretary of the Ministry of Information and Communication Technology and the Director of the Office of Information and Communication Technology Promotion;
- (3) not more than seven qualified members appointed by the Council of Ministers from the persons with knowledge, skill and experience in information technology, communication, management, information and communication technology industry or law which are relevant and beneficial to the undertaking of the Agency and not being government officials or working with State agency.

The Director shall be *ex officio* member and secretary. The Director shall appoint the officer to be assistance secretary.

Section 15

The Chairperson and qualified members shall have the qualifications and shall not be under any of the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being of not less than thirty-five years of age and not more than seventy years of age;

- (3) not being a bankrupt, incompetent or quasi-incompetent;
- (4) not having been sentenced by a final judgment to imprisonment, except for an offence committed through negligence or a petty offence;
- (5) not being a person holding a political position, member of a local assembly or local administrator, director or person in charge of the administration of a political party, advisor of a political party or official of a political party;
- (6) not being officer or employee of the Agency, advisor, member of a sub-committee or expert having any contract with the Agency.

Section 16

The Chairperson and a member shall not have interest, whether directly or indirectly, in any undertaking done with the Agency or in any undertaking which its business is competitive with that of the Agency.

Section 17

The Chairperson and a qualified member hold office for a term of three years.

At the expiration of the term under paragraph one, if the new Chairperson or qualified member has not been appointed, the Chairperson or qualified member who vacates office shall remain in office to continue his duties until the newly appointed Chairperson or qualified member takes office.

The Chairperson or a qualified member who vacates office at the end of the term may be re-appointed, but not more than two consecutive terms.

Section 18

In addition to vacating office at the end of the term, the Chairperson and a qualified member vacate office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Council of Ministers due to negligent in the discharge of duty, disgrace behavior or incapability;
- (4) being disqualified or being under any of the prohibitions under Section 15 or violating the prohibition under Section 16.

Section 19

In the case where the Chairperson or a qualified member vacates office before term, the Council of Ministers shall appoint another person to fulfill the vacancy. If the remaining term of office is less than ninety days, the appointment to fulfill the vacancy may not be made. The appointee shall remain in office for the remaining term of the Chairperson or a qualified member he replaces.

In the case where the Chairperson or a qualified member vacates office before term, the Board shall consist of the existing number of the members until the appointment to fulfill the vacancy under paragraph one is made. In the case where the Chairperson vacates office before term, the existing members shall elect one among themselves to preside over the meeting.

Section 20

The Board shall have the powers and duties to supervise business undertaking of the Agency to be compliance with its objectives and the powers and duties under Section 7 and Section 8 and shall also have the powers and duties as follows:

- (1) to lay down administrative policy and approve operation plan of the Agency;
- (2) to approve investment and financial plan and budget of the Agency;
- (3) to supervise general undertaking and administration and to lay down rule, regulation, notification or determination in relation to general administration of

the Agency, to structure the Agency and determine scope of works thereof, to determine position, qualification of each position, salary and wage scale and other benefits of the officer and employee, to be responsible for recruitment, appointment, discipline and disciplinary punishment, removal from office, petition and appeal against punishment of the officer and employee, finance, procurement, welfare and provision, dissemination or use of information;

- (4) to carry out any act which is necessary for, or in connection with, the achievement of the objectives of the Agency.

Section 21

At a meeting of the Board, the presence of not less than one-half of the total number of its members shall constitute a quorum.

At a meeting, if the Chairperson is unable to attend the meeting, or is unable to perform his duties, the members shall elect one among themselves to preside over the meeting.

In the performance of duties, the Chairperson or a member who has interest in the matter under consideration, whether directly or indirectly shall inform such interest at the meeting. In this case, the Board shall, in accordance with the regulation laid down by the Board, consider as to whether such Chairperson or member should be allowed to attend the meeting or vote for that matter.

A decision shall be made by a majority of votes. In casting votes, each member shall have one vote. In case of an equality of votes, the person who presides over the meeting shall have an additional vote as a casting vote.

Section 22

The Board shall have the power to appoint an expert to be its advisor and shall have the power to appoint sub-committee to consider or carry out any matter as entrusted by the Board.

The advisor and sub-committee shall not have interest, whether directly or indirectly, in any undertaking done with the Agency or in any undertaking which its business is competitive to that of the Agency.

The provisions of Section 21 shall apply *mutatis mutandis* to the meeting of the sub-committee.

Section 23

The Chairperson, member, advisor and member of subcommittee shall be entitled to remuneration upon meeting and other benefits in accordance with the rule laid down by the Council of Ministers.

Section 24

There shall be a Director of the Agency upon hiring.

The Board shall have the powers to hire and dismiss the Director.

The rule and procedure for selection of the Director shall be laid down by the Board in its determination.

Section 25

The Director shall perform full-time work for the Agency and shall have qualifications and shall not being under the prohibition as follows:

- (1) being of Thai nationality;
- (2) being of not less than twenty-five years of age and not more than sixty-five years of age;
- (3) being a person having appropriate knowledge, capacity and experience with business undertaking of the Agency under its objectives and the powers and duties under Section 7 and Section 8;
- (4) not being under any of the prohibitions under Section 15 (3), (4) or (5).

Section 26

The Director shall not have interest, whether directly or indirectly, in any undertaking done with the Agency or in any undertaking which its business is competitive to that of the Agency.

Section 27

The Director holds office for a term as specified in the employment contract, but not more than four years. The employment contract may be renewed, but not more than two consecutive terms.

Section 28

In addition to vacating office at the end of the term, the Director vacates office upon:

- (1) death;
- (2) resignation;
- (3) the occurrence of any circumstance as specified in the agreement between the Board and the Director;
- (4) being dismissed by the Board due to the negligent in the discharge of duty, disgrace behavior or incapability;
- (5) being disqualified or being under the prohibition under Section 25 or violating the prohibition under Section 26.

The resolution of the Board to dismiss the Director under (4) shall be made by not less than two-thirds of the existing number of the members other than the Director.

Section 29

The Director shall have the duty to administer the Agency to be in accordance with the law, its objectives and rule, regulation, determination, notification, policy and resolution laid down by the Board. The Director shall be superior of all officers and employees other than the internal auditor under Section 39 paragraph two and shall also have the following duties:

- (1) to propose target, work plan and project for the accomplishment of the objectives of the Agency to the Board;
- (2) to submit annual report presenting the outcome of the undertaking of the Agency in all aspects, including financial and accounting report, and to submit the financial plan and appropriate expenditure for the next fiscal year to the Board for consideration;
- (3) to give recommendation on an improvement of the undertaking of the Agency to the Board with a view to enhance the efficiency of the Agency for the accomplishment of its objectives.

The Director shall be responsible for the administration of the Agency to the Board.

Section 30

The Director shall, in administration of the Agency, take the following principles into his consideration:

- (1) being compact Organization with necessary unit and being able to be adjusted, dissolved, merged, extended or expanded flexibly in response of existing necessity or circumstance;
- (2) economizing or reducing in administrative cost;
- (3) employing administrative resources efficiently and supporting result-based management;
- (4) promoting and synchronizing coordination between State and private agencies for the achievement of the objectives of the Agency.

Section 31

The Director shall have the following powers:

- (1) to recruit, appoint, promote, reduce or cut salary or wage, impose disciplinary measure on officer and employee and to remove officer and employee in accordance with the regulations laid down by the Board;
- (2) to lay down the rule relating to business undertaking of the Agency which is not contrary to, or inconsistent with, the rule, regulation, determination, notification, policy or resolution of the Board.

Section 32

In relation to external affairs, the Director shall be representative of the Agency. For this purpose, the Director may entrust any person to carry out specific undertaking on his behalf in accordance with the regulation laid down by the Board.

Section 33

The Board shall have the power to determine remuneration rate and other benefits of the Director in accordance with the rule laid down by the Council of Ministers.

CHAPTER IV Staff of the Agency

Section 34

There are three categories of the staff of the Agency that are:

- (1) an officer or employee, *viz.*, a staff who receives salary or wage from budget of the Agency;
- (2) an advisor or expert, *viz.*, a staff whom hired by the Agency to be its advisor or expert;
- (3) a government official who has been transferred to work for the Agency temporarily under Section 38.

Section 35

An officer shall have the qualifications and shall not be under any of the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being not less than eighteen years of age and not more than sixty years of age;
- (3) being capable to perform full-time work for the Agency;
- (4) having qualification or experience in compliant with the objectives and powers and duties of the Agency;
- (5) not being a government official or government employee, officer or employee of State enterprise or other State agencies or officer or employee of a local government;
- (6) not being under any of the prohibitions under Section 15 (3), (4) or (5).

The provisions of (1) shall not apply to foreign officer whom hired or appointed by the Agency to fulfill any engagement or for the compliance with the nature or business undertaking of the Agency.

Section 36

The officer shall not have interest, whether directly or indirectly, in any undertaking done with the Agency or in any undertaking which its business is competitive with that of the Agency.

Section 37

The officer vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any of the prohibitions under Section 35 or violating any prohibition under Section 36;
- (4) being dismissed or discharged on account of being unable to pass performance assessment or being in breach of discipline in accordance with the rule and procedure specified in the regulation laid down by the Board.

Section 38

For the benefit of management of the Agency, the Minister may request a government official, officer, employee or other staffs of any Ministry, Sub-Ministry, Department, provincial administration, local administration, State enterprise or other State agencies to perform duties as an officer of the Agency temporarily. In this case, an approval of the superior or employer of such person shall be given and the agreement on such approval shall be made.

A government official, officer, employee or other staffs who has been approved to perform duties as an officer of the Agency temporarily under paragraph one is deemed to be permitted to vacate or leave from official service to perform other works, and the period which such person has worked for the Agency shall be counted as the period for calculation of gratuity, pension or other similar benefits as if such person still be in the government service or has done full-time work, as the case may be.

At the expiration of the approved period, a government official under paragraph one shall be entitled to the position and salary of not lower than the position and salary specified in the agreement on approval.

CHAPTER V

Accounting, Audit and Performance Evaluation of the Agency

Section 39

An accounting of the Agency shall be in accordance with international standard and shall be compliance with the form and rule laid down by the Board. An internal audit on finance, accounting and procurement of the Agency shall be organized and the report thereof shall be submitted to the Board at least once a year.

An internal audit shall be conducted by a staff of the Agency who is appointed to be an internal auditor. An internal auditor shall be responsible directly to the Board in accordance with the rule laid down by the Board.

Section 40

The Agency shall prepare and submit the balance sheet, financial statement and operating account to the auditor within ninety days after the expiration of each accounting year.

Each year, the Office of the Auditor General or the third person appointed by the Board with approval of the Office of the Auditor General shall audit an account and assess the spending of money and properties of the Agency. In this regard, the auditor shall analyze as to whether such spending is compliance with its objectives, economy and produce target results and shall submit the audited report to the Board.

For this purpose, the auditor shall have the powers to examine all books of account, documents and evidences of the Agency, to interrogate the Director, officer and employee or other persons, and to summon any book of account, document and evidence from the Agency as appropriate.

Section 41

The Agency shall submit an annual report to the Minister. Such report shall state the performance of the Agency through the lapse year, operating account together with the report of the auditor and statement on policy of the Board, project and work plan to be done.

Section 42

For the purpose of efficiency enhancement and auditing of the Agency to be in accordance with its objectives and designated project and work plan, the Agency shall provide evaluation to its performance within the period determined by the Board, but not exceeding three years.

The performance evaluation under paragraph one shall be conducted by an impartial institute, Organization or group of person skillfully in performance evaluation which is selected or appointed in accordance with the procedure laid down by the Board.

The performance evaluation of the Agency shall reveal facts on effectiveness and efficiency and on Organization development as well as other details as may be determined by the Board.

If there is provisionally reasonable necessity, the Board may organize the performance evaluation under this Section from time to time.

CHARTER VI

Supervision

Section 43

The Minister shall have the powers and duties to supervise the undertaking of the Agency to be in accordance with the laws and its objective, government policy and resolution of the Council of Ministers in relation to the Agency. For this purpose, the Minister shall have the powers to order the Agency to give statement, opinion or report, to suspend any act of the Agency which is contrary to its objectives, government policy and resolution of the Council of Ministers in relation to the Agency, and to have an order to investigate the fact related to business undertaking of the Agency.

CHAPTER VII

Transitory Provisions

Section 44

At the outset, the Minister shall request the Council of Ministers to approve the allocation of money in an amount the Minister thinks fit to the Agency as its start-up fund.

Section 45

At the outset where there is no the Software Industry Promotion Board under this Royal Decree, there shall be the Software Industry Promotion Board consisting of the Permanent Secretary of the Ministry of Information and Communication Technology as Chairperson, the Director of the National Electronics and Computer Technology Center, a representative of the Software Industry Association, a representative of the Thai Computer Business Association and three qualified persons appointed by the Minister from the person having knowledge and capacity in the field of software as members. The Acting Director under paragraph two shall be member and secretary. The aforesaid Software Industry Promotion Board shall perform its duties until the establishment of the Board under this Royal Decree which shall not exceed sixty days as from the day this Royal Decree comes into force.

In the case where there is no Director under this Royal Decree, the Minister shall appoint a person whom he deems appropriate to be Acting Director of the Software Industry Promotion Agency. The Acting Director shall perform his duties until there shall be the Director under this Royal Decree which shall not exceed ninety days as from the day this Royal Decree comes into force.

Section 46

While there is no Director of the Office of Information and Communication Technology Promotion as *ex officio* member under Section 14 (2), the Software Industry Promotion Board shall consist of the existing members.

Countersigned by

Police Gen. Thaksin Shinawattana

Prime Minister

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