

STATE ENTERPRISE CORPORATIZATION ACT,
B.E. 2542 (1999)

BHUMIBOL ADULYADEJ, REX.

Given on the 4th Day of December B.E. 2542 (1999);

Being the 54th Year of the Present Reign.

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

Whereas it is expedient to have a law on State enterprise corporatization;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which section 29 in conjunction with sections 35, 48 and 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

Section 1. This Act is called the “State enterprise Corporatization Act, B.E. 2542 (1999)”.

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:

“State enterprise” means a State enterprise pursuant to the law on budgetary procedures which is not a limited company or a public limited company;

“company” means a limited company or a public limited company;

* Translated by Legal Opinion and Translation Section, Foreign Law Bureau, and reviewed by Mrs. Vilawan Mangklatanakul under contract for the Office of the Council of State of Thailand's Law for ASEAN project. –Initial Version– pending review and approval by the Office of the Council of State.

“staff” means a staff and employee of a State enterprise, and shall also include a governor, a director, a manager, a secretary-general and a person holding a position with such similar functions and powers.

Section 4. In the case where the government has a policy to convert, in whole or in part, capital of a State enterprise into shares in the form of a company, such a policy may be implemented pursuant to this Act.

Section 5. There shall be a committee called the “State Enterprise Corporatization Policy Committee” consisting of the Prime Minister as Chairperson, not more than fifteen Ministers appointed by the Prime minister, the Director of the Budget Bureau, the Secretary-General of the Council of State, the Secretary-General of the National Economic and Social Development Board, and not more than six qualified persons appointed by the Council of Ministers as members. The Permanent-Secretary of the Ministry of Finance shall be member and secretary. A representative of the Ministry of Finance shall be an assistant secretary.

Section 6. A qualified member pursuant to section 5 shall hold office for a term of two years. A qualified member who vacates office may be re-appointed.

In the case where a qualified member vacates office at the expiration of his or her term but a new qualified member has not been appointed, such qualified member shall continue in office to perform his or her duties until the new qualified member is appointed.

Section 7. An appointment of qualified members pursuant to section 5 shall be made by individual identification.

Section 8. In addition to vacating office on the expiration of term, a qualified member pursuant to section 5 vacates office upon:

- (1) death;
- (2) resignation;
- (3) being incompetent or quasi-incompetent;
- (4) being dismissed by the Council of Ministers;
- (5) being under any of the prohibitions pursuant to section 9.

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Section 9. A qualified member pursuant to section 5 shall not be under any of the following prohibitions:

- (1) being bankrupt;
- (2) being imprisoned or having been sentenced by a final judgment to a term of imprisonment, except for an offence committed through negligence or a petty offence;
- (3) being a political official, a person holding political position, a member of local assembly, a local administrator, an advisor of a political party, an executive member of a political party or an official of a political party;
- (4) being, or having been within the three-year period prior to his or her appointment, a member or an executive officer or an authorized person in the management or having an interest in a juristic person which is a concessionaire, a party to a joint venture, or having an interest relating to the undertakings of the State enterprise whose capital is to be converted into shares.

Section 10. In the case where a qualified member vacates office before the expiration of his or her term, the Council of Ministers may appoint another person as a qualified member. A replacing qualified member shall hold office for the equivalent remaining term of the qualified member he or she replaces.

In the case where there is an appointment of an additional qualified member during the term of qualified members already appointed, the person appointed as additional qualified member shall hold office for a period equal to the remaining term of the qualified member already appointed.

Section 11. If a member pursuant to section 5 who is not a qualified member becomes or has been, within the three-year period prior to his or her appointment, a shareholder or a director or an authorized person in the management or a financial advisor, a share purchase advisor or a share purchase offer arranger, or who has an interest in a juristic person which is a concessionaire, a party to a joint venture or has an interest relating to the undertakings of the State enterprise whose capital is to be converted into shares, such a case shall be notified to the State Enterprise Corporatization Policy Committee in writing within thirty days as from the date he or she assumes office or as from the date when such a case occurs.

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Section 12. Within the three-year period as from the vacation of office, a member pursuant to section 5 shall not become a shareholder or a director, an authorized person in the management, a financial advisor or a share purchase advisor or a share purchase offer arranger, or receive any special sum or benefits other than the normal business or undertakings of a juristic person which is a concessionaire, a party to a joint venture or a company established by the conversion of capital of a State enterprise into shares of a company, except for the case of a government official who is assigned by the relevant public authority of the State enterprise.

Section 13. The State Enterprise Corporatization Policy Committee shall have the powers and duties as follows:

(1) to present views to the Council of Ministers for consideration to approve the principle and guidelines for implementing the conversion of capital of a State enterprise, in whole or in part, into shares of a company;

(2) to present views to the Council of Ministers on matters relating to the conversion of capital into shares and the registration to establish a company as proposed by the Company Establishment Preparatory Committee pursuant to section 21;

(3) to present views to the Council of Ministers in relation to the determination of the Minister to oversee the policies of the company to be registered for establishment pursuant to (2);

(4) to recommend an amendment of a Royal Decree pursuant to section 26;

(5) to oversee the conduct of public hearings pursuant to this Act;

(6) to execute other functions pursuant to this Act;

(7) to consider other matters as assigned by the Council of Ministers.

Section 14. At a meeting of the State Enterprise Corporatization Policy Committee, the presence of not less than one-half of the total number of members is required to constitute a quorum.

The Chairperson of the State Enterprise Corporatization Policy Committee shall preside over meetings. If the Chairperson is not present at the meeting or is unable to perform his or her duties, the members being present shall elect one among themselves to preside over at the meeting.

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

In a meeting, if any member has an interest in a matter being considered, such member shall not be eligible to attend the meeting on such matter. However, if the meeting requests such member to be present in order to give a statement of facts or present views, such member may be present at the meeting only for such purpose. While such member is requested to leave the meeting, the State Enterprise Corporatization Policy Committee shall be deemed as consisting of all members, excluding those requested to leave the meeting.

Section 15. In the performance of duties of the State Enterprise Corporatization Policy Committee pursuant to this Act, the State Enterprise Corporatization Policy Committee shall have the power to invite representatives of any agency or any person from both the public and private sectors to give facts or present views.

Section 16. Once the Council of Ministers approves in principle the conversion of capital of any State enterprise into shares in the form of a company, there shall be a Company Establishment Preparatory Committee consisting of the Permanent Secretary of the Ministry or Sub-Ministry whose Minister oversees the State enterprise whose capital is to be converted into shares as Chairperson, the Permanent Secretary of the Ministry of Finance, the Director of the Budget Bureau, the Director-General of the Department of Business Development, the Auditor General, the chief executive officer of that State enterprise, one staff representative of that State enterprise and not more than three qualified members who may be appointed as appropriate to the conversion of capital of that State enterprise into shares as members, and a representative of the Ministry of Finance as member and secretary.

The Chairperson and *ex officio* members pursuant to paragraph one shall consider an appointment of qualified members and staff representatives. An appointment of qualified members shall be made from persons with expertise in finance and accounting, and in the undertakings or operations of the State enterprise whose capital is to be converted into shares, being at least one expert from each field. A staff representative shall be appointed from the president of the staff

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association of the State enterprise or a staff nominated by the board of directors of that State enterprise in the case where that State enterprise does not have a staff association.

The Company Establishment Preparatory Committee shall appoint any person as assistant secretary as it deems appropriate.

The chief executive officer of the State enterprise pursuant to paragraph one means the governor, the director or the person holding a position with similar functions and powers.

Section 17. A qualified member pursuant to section 16 vacates office upon:

- (1) death;
- (2) resignation;
- (3) being incompetent or quasi-incompetent;
- (4) being dismissed by the decision of the Committee;
- (5) being under any of the prohibitions of a qualified members

pursuant to section 5.

Section 18. The provisions of sections 6, 7, 10, 11, 12, 14 and 15 shall apply to the Company Establishment Preparatory Committee, *mutatis mutandis*, as the case may be. However, the prohibition from being a shareholder or a director or an authorized person in the management of a company established by the conversion of capital of a State enterprise into shares of the company pursuant to section 12 shall not apply to the member of the Company Establishment Preparatory Committee who is the chief executive office or the staff representative of the State enterprise.

Section 19. The Company Establishment Preparatory Committee shall have the duties to propose details relating to the company to be established by the conversion of capital of a State enterprise into shares of that company pursuant to the principles and guidelines approved by the Council of Ministers pursuant to section 13 (1). In this regard, the following shall be carried out:

- (1) the determination of the undertakings, rights, obligations, liabilities and assets of the State enterprise, the portion of which will be transferred to the

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company to be established and the portion of which will be granted to the Ministry of Finance;

(2) the determination of staffs who will become employees of the company;

(3) the determination of the share capital or registered capital for the registration of company establishment, the number of shares and the value of each share, as well as other items which belong to the shareholders;

(4) the determination of the company name;

(5) the determination of the management structure of the company, the list of company director and the auditor in the initial period;

(6) the preparation of the memorandum of association and articles of the company;

(7) the preparation of a draft Royal Decree pursuant to section 26;

(8) the preparation of a draft Royal Decree to specify the time condition for the dissolution of the State enterprise in case of the transfer of all undertakings of the State enterprise;

(9) the conduct of a public hearing pursuant to the regulations specified by the State Enterprise Corporatization Policy Committee as published in the Government Gazette, which shall at least contain public hearings on matters pursuant to (1), (2), (7) and (8);

(10) the consideration of other matters as assigned by the Council of Ministers or the State Enterprise Corporatization Policy Committee.

A State enterprise may have its capital converted into shares and establish one or several companies. In case of conversion of capital into shares of several companies, such actions may be carried out either simultaneously or otherwise, or all undertakings or part of several State enterprises may be combined to establish one or several companies.

Information prepared by the Company Establishment Preparatory Committee shall be disclosed to the public, except for cases whose procedures are pending and may be detrimental to interests of a state.

Section 20. A Company Establishment Preparatory Committee may appoint one or several sub-committees to consider or perform any particular function on its behalf.

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The members of the sub-committee shall not be under any of the prohibitions as prescribed for qualified members pursuant to section 5. Section 18 shall apply to the sub-committee, *mutatis mutandis*.

Section 21. The Company Establishment Preparatory Committee shall report details relating to the establishment of a company pursuant to section 19 to the State Enterprise Corporatization Policy Committee for consideration.

The State Enterprise Corporatization Policy Committee may make any amendment to the proposal of the Company Establishment Preparatory Committee as it deems appropriate and submit to the Council of Ministers for approval of the conversion of capital of the State enterprise into shares and further establishment of a company.

Section 22. Once the Council of Ministers approves the conversion of capital of any State enterprise into shares and the establishment of a company, the partnerships and companies registrar under the Civil and Commercial Code or the registrar under the law on public limited company, as the case may be, shall register that company pursuant to the details as approved by the Council of Ministers.

Registration pursuant to paragraph one shall be exempted from any fees related thereto.

The shares of a company registered pursuant to paragraph one shall be fully paid-up shares and the Ministry of Finance shall be the holder of all shares.

The provisions of the Civil and Commercial Code and the law on public limited company with respect to the status and establishment of companies shall not apply to a registration pursuant to paragraph one.

Once the registration of a company pursuant to paragraph one is completed, the operations of the company shall be in accordance with the Civil and Commercial Code or the law on public limited company, as the case may be, except where provided in this Act. The items relating to the company that is registered shall continue to be in effect until amended or modified otherwise pursuant to the law on that matter.

Section 23. During the period when the Ministry of Finance has not yet transferred the shares it holds to other persons, the provisions of the Civil and Commercial Code and the law on public limited company with respect to the

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number of shareholders and number of shares that may be held by each shareholder shall not apply. The views of the Ministry of Finance in relation to that company shall be deemed as a decision of the general meeting of the shareholders.

The views of the Ministry of Finance being notified to the partnerships and companies registrar or public limited companies registrar shall be published in the Government Gazette.

Section 24. On the date of company registration pursuant to section 22, undertakings, rights, obligations, liabilities and assets of the State enterprise, as approved by the Council of Ministers, shall be transferred to the company or the Ministry of Finance, as the case may be.

In the case where an obligation is transferred to the company pursuant to paragraph one is an obligation guaranteed by the Ministry of Finance, the Ministry of Finance shall continue to guarantee such obligation. A guarantee fee maybe collected, except where it is agreed with the creditor to reduce or relieve such guaranteed obligation of the Ministry of Finance.

Rights pursuant to paragraph one shall also include rights pursuant to a land lease contract for crown land or public property enjoyed by the State enterprise on the date of the company registration.

As for the rights of usage of crown land or public property previously enjoyed by the State enterprise pursuant to the law on crown land or other laws, the company shall retain the right of usage of such land pursuant to the existing conditions, but shall make payment as state revenues as prescribed by the Ministry of Finance.

Section 25. On the date of the company registration pursuant to section 22, staffs, as approved by the Council of Ministers, shall become employees of the company established by the conversion of capital of the State enterprise into shares of that company.

Staffs pursuant to paragraph one shall receive salaries, wages and benefits in an amount not less than what they received previously and the working period of such staffs in the former State enterprise shall be deemed as the working period in the company. The transformation of the former State enterprise into a company shall not be deemed as a termination of employment.

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The provident fund for staffs of the former State enterprise that has been transformed into a company shall remain in existence and the company shall have the status of a co-employer with the former State enterprise or an employer in lieu of the former State enterprise, as the case may be.

Section 26. In the case where the law establishing the State enterprise whose capital is converted into shares of a company or other laws contain provisions empowering the State enterprise to conduct any action with respect to a person, property or rights of a person, or contain provisions exempting the undertakings of that State enterprise from being subjected to any law or exempting compliance with laws on any matter, or contain provisions which grant privileges specifically to that State enterprise, or contain provisions protecting the undertakings, staffs or employees of the State enterprise, those provisions shall be deemed to remain in force. In this regard, the company shall have the same status as the State enterprise pursuant to such law. However, such powers, rights or benefits may be restricted or withdrawn as prescribed in the Royal Decree, and the Royal Decree may vest such powers in any particular committee as the State Enterprise Corporatization Policy Committee may prescribe or appoint. Section 9 shall also apply to such committee, *mutatis mutandis*.

In cases pursuant to paragraph one, proceedings shall be undertaken to enact a Royal Decree to retain the powers, rights or benefits of the company only to the extent that is necessary to the undertakings which will contribute to the public interest. Due account shall be given to fairness in business competition, controls to ensure due exercise of legal powers and the safeguard of state interests. In this regard, a time condition or condition requiring performance or any case requiring prior approval of the committee pursuant to paragraph one may also be prescribed. The State Enterprise Corporatization Policy Committee shall recommend regular revisions and further amendments of such Royal Decree to be in accordance with the changes in the conditions of that type of business.

In the case where the State enterprise whose capital is converted into shares of a company has entered into a contract stipulating that a contractual party has the right to carry out any undertaking, such contractual party shall be deemed as having a lawful right to continue its undertakings pursuant to that contract until the contract expires, even if a law mandating free competition for such type of undertaking is subsequently enacted.

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The powers of the committee pursuant to paragraph one, the powers of the overseeing Minister, the powers, rights or benefits pursuant to paragraphs one and three shall lapse upon the enactment of a law on the undertaking which is carried out by the company pursuant to paragraph one or a contractual party pursuant to paragraph three. In such cases, the undertaking of such company or contractual party, as the case may be, shall be subject to the law on that matter pursuant to the principles of fair and equal business competition. In the case where such law specifies that that undertaking requires a license or a concession or any action, if such company or contractual party submits a request, the license or concession shall be granted or such action shall be allowed. In the case of a contractual party, such right shall be retained for the remaining period pursuant to the contract, except where the contractual party agrees to waive such right or the Council of Ministers passes a resolution to terminate such right by paying fair compensation.

The powers, rights or benefits pursuant to paragraph one shall terminate upon the termination of that company as a State enterprise pursuant to the law on budgetary procedures.

Section 27. The committee pursuant to section 26 paragraph one shall have the power to prescribe rules and conditions for the exercise of various powers of the company established by the conversion of capital of a State enterprise into shares of a company only to the extent that is not contrary to or inconsistent with the Royal Decree enacted pursuant to section 26 paragraph one, as well as to prescribe rules and conditions on the operations of the company in order to maintain quality and service fee rates or prices which are fair for all parties, both the business operators and the consumers.

The overseeing Minister pursuant to section 13(3) shall have charge and control pursuant to the relevant law on establishment of the State enterprise and shall have to powers and duties of overseeing the operations of the company established by the conversion of capital of a State enterprise into shares of a company to be in accordance with the law, as well as rules and conditions prescribed by the committee pursuant to section 26 paragraph one.

Section 28. In the case where there is a resolution by the Council of Ministers to dissolve any State enterprise, the law establishing that State enterprise

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shall be deemed as repealed pursuant to the time condition as prescribed in the Royal Decree enacted for such purpose.

In the case where any company has power, is exempted, or receives privilege or immunity pursuant to section 26, the provisions of the law establishing the State enterprise being repealed shall continue to be in force for the period of time as prescribed in the Royal Decree pursuant to section 26.

Section 29. Upon the enactment of the Royal Decrees pursuant to sections 26 and 28, the Government shall report to the House of Representatives and the Senate for information without delay.

Section 30. Any person who violates section 12, 18 or 20 in conjunction with section 12 shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred thousand bath, or to both.

Section 31. The Prime Minister shall have charge and control of the execution of this Act.

Countersigned by:
Mr. Chuan Leekpai
Prime Minister

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