

Unofficial Translation

Private Investments in State Undertakings Act
B.E. 2556 (2013)

BHUMIBOL ADULYADEJ, REX;

Given on the 29th Day of March B.E. 2556;

Being the 68th Year of the Present Reign.

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

Whereas it is expedient to revise the law on private participation in state undertakings;

This Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29, in conjunction with section 43 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 “Private Investments in State Undertakings Act B.E. 2556 (2013)”.

Section 2¹. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. The Act on Private Participation in State Undertakings Act B.E. 2535 (1992) shall be repealed.

¹ Published in the Government Gazette, Vol. 130, Part 31a, Page 1, on 3rd April B.E. 2556 (2013).

Section 4. In this Act:

“state undertaking” means an undertaking having one of the following descriptions:

(1) an undertaking which a government agency, state enterprise, other state agency or local administrative organisation, either singly or collectively, have a legal obligation to perform;

(2) an undertaking which requires the utilisation of natural resources or properties of one or several government agencies, state enterprises, other state agencies or local administrative organisations, either singly or collectively;

“investment” means a public-private joint investment undertaken by any means, or designation of a unilateral private investment by way of a licence or concession or grant of any kind of right;

“project” means an investment in a state undertaking;

“host agency” means a government agency having the status of a department or its equivalent, other state agency or local administrative organisation which invites private investment in a state undertaking;

“state enterprise” means:

(1) a government organisation under the law on establishment of government organisations, government undertaking under a law establishing such an undertaking or business entity owned by the government;

(2) a company or juristic partnership in which more than fifty percent of the capital is owned by the Ministry of Finance or a state enterprise under (1) or other state agency;

“other state agency” means an agency under the supervision of the state, public organisation or agency established under a specific law or other agency having juristic personality which is neither a government agency nor a state enterprise under the supervision of the Executive;

“local administrative organisation” means a provincial administrative organisation, municipality, tambon administrative organisation, Bangkok Metropolitan Administration, Pattaya City or other local administrative organisation established by law;

“Responsible Ministry” means:

(1) in the case of a government agency, a ministry or sub-ministry in charge of other government agencies pursuant to the law on reorganization of ministries, sub-ministries and departments;

(2) in the case of a state enterprise:

(a) for a state enterprise other than a company, a ministry or sub-ministry of which the minister is the authority having charge and control of the execution of the law establishing such state enterprise or the minister responsible for the operations of such state enterprise;

(b) for a company, the Ministry of Finance or ministry or sub-ministry to which the Ministry of Finance has granted proxy for the exercise shareholder rights in the company on behalf of the Ministry of Finance for the purposes of performing the duties of the Responsible Ministry under this Act;

(3) in the case of other state agency, a ministry or sub-ministry of which the minister is the authority having charge and control of the execution of the law establishing such agency or the minister responsible for the operations of such agency;

(4) in the case of a local administrative organisation, the Ministry of Interior;

“private entity” means a person or juristic person which is not a state agency or other agency of the Thai government;

“Strategic Plan” means the Strategic Plan on Private Investment in State Undertakings;

“Fund” means Private Investment in State Undertaking Promotion Fund;

“Committee” means the Private Investments in State Undertakings Policy Committee;

“Fund Committee” means the Private Investment in State Undertakings Promotion Fund Committee;

“Office” means the State Enterprise Policy Office;

STATE ENTERPRISE POLICY OFFICE

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“Minister” means the minister having charge and control of the execution of this Act.

Section 5. The Minister of Finance shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations for the implementation of this Act.

A Ministerial Regulation shall come into force upon publication in the Government Gazette.

Chapter 1 General Provisions

Section 6. A private investment in state undertaking shall have regard to the following principles:

- (1) efficiency and value for money of the operation and utilisation of state resources;
- (2) adherence to monetary and fiscal discipline;
- (3) social and economic benefits generated by the project;
- (4) transparency in the relevant decision-making process;
- (5) suitable risk allocation in the project between the state and private entity;
- (6) rights and benefits enjoyed by the end user and service provider;
- (7) promotion of fair competition among private entities wishing to participate in an investment.

Section 7. This Act shall apply to private investments in state undertakings except for concessions under the law on petroleum and mining concessions under the law on minerals.

In the case where a state undertaking is governed by a law which has sufficiently provided a process for private investment as well as the supervision and

monitoring of the project, a Royal Decree may be enacted to exclude the application of this Act to such private investment in state undertaking.

Chapter 2

Private Investments in State Undertakings Policy Committee

Section 8. There shall be a committee called the “Private Investments in State Undertakings Policy Committee” consisting of the Prime Minister as Chairman, Minister of Finance as Vice-Chairman, Permanent Secretary of the Ministry of Finance, Secretary-General of the Council of State, Secretary-General of the National Economic and Social Development Board, Budget Director of the Bureau of the Budget, Comptroller General, Director-General of the Public Debt Management Office, Attorney General and not more than seven qualified persons appointed by the Council of Ministers as Members.

The Director-General of the State Enterprise Policy Office shall be a Member and Secretary and not more than two officials of the Office appointed by the Director-General of the State Enterprise Policy Office shall be Assistant Secretaries.

Section 9. Qualified Members under section 8 shall be appointed by the Council of Ministers from the list of persons nominated by way of a selection process in accordance with the rules and procedures prescribed by the Minister with the approval of the Council of Ministers.

Section 10. A Qualified Member under section 8 must have Thai nationality and not have the following disqualifications:

- (1) being an incompetent or quasi-incompetent person;
- (2) being a bankrupt or having been a dishonest bankrupt;
- (3) having been sentenced to imprisonment by a final judgment, except for an offence committed negligently or a minor offence;

(4) having been adjudged or ordered by a court to vest assets in the state due to unusual wealth or an unusual increase in assets;

(5) having been expelled, discharged or dismissed from the government service, state agency or state enterprise, or from a private agency due to a dishonest performance of duty;

(6) being or having been a member of the House of Representatives, senator, local councillor, local executive officer or holder of other political office, except where a period of not less than one year has lapsed since the vacation of office;

(7) being or having been a holder of a position in a political party, except where a period of not less than one year has lapsed since the vacation of office;

(8) being a person who is serving a ban from political office or has been removed or dismissed from office by a resolution of the Senate.

Section 11. A Qualified Member under section 8 shall serve for a term of four years. A Qualified Member who vacates office may be reappointed but may not serve two consecutive terms.

In the case where a Qualified Member under section 8 vacates office but a new Qualified Member has not yet been appointed, such Qualified Member shall continue to perform duties until a new Qualified Member is appointed, but in no event shall such continuation of performance of duties exceed one hundred and twenty days.

Section 12. In addition to the vacation of office at the expiration of term, a Qualified Member under section 8 shall vacate office upon:

- (1) death;
- (2) resignation;
- (3) attaining seventy years of age;
- (4) lacking any qualification or having any disqualification under section 10;

(5) being absent from more than three consecutive sessions of the Committee without reasonable cause;

(6) removal by the Council of Ministers.

Section 13. In the case where a Qualified Member under section 8 vacates office prior to the expiration of term and a new Qualified Member has not yet been appointed to fill the vacant office, the remaining Members shall continue to perform duties.

When the office of a Qualified Member becomes vacant prior to the expiration of term, proceedings shall be taken to select a Qualified Member within sixty days as from the date of the vacancy, except where the remaining term of the Qualified Member is less than one hundred and eighty days where a replacement Qualified Member does not have to be appointed.

A Qualified Member under section 8 who is appointed to fill the vacant office shall serve for a term equal to the remaining period of the predecessor Qualified Member.

Section 14. A meeting of the Committee must be attended by not less than one-half of the remaining Members in order to constitute a quorum.

The Chairman shall be the presiding officer in a meeting. If the Chairman is absent from the meeting or is unable to perform duties, the Vice-Chairman shall be the presiding officer. However, if both the Chairman and Vice-Chairman are absent or unable to perform duties, the meeting shall elect one Member to perform the duties of a presiding officer.

A decision shall abide by the majority vote. One Member shall have one vote. If there is an equality of votes, the presiding officer shall cast an additional vote as a casting vote.

A Member having an interest in a matter under consideration may neither attend the meeting nor cast a vote on such matter.

Section 15. Within two years of vacating office, a Member under section 8 shall not commit the following acts:

(1) become a board member, person having management authority or advisor in a private enterprise that has been selected for investment in a project approved in principle by the Committee while he/she was serving as a Member;

(2) hold shares in a private entity under (1) in an amount exceeding zero point five percent of the paid up share capital.

An act under paragraph one shall include becoming a board member, person having management authority or advisor or holding shares in excess of zero point five percent of the paid up share capital in a juristic person in which the private entity under paragraph one holds shares in excess of twenty-five percent, or in a juristic person which holds shares in the private entity under paragraph one in excess of twenty-five percent.

Section 16. The Committee shall have the following powers and duties:

(1) to prepare a Strategic Plan for submission to the Council of Ministers for approval;

(2) to give approval in principle to a project which involves a private investment and the operation of a project as stated under this Act;

(3) to consider making proposals of monetary or fiscal measures or approaches for supporting private investments in state undertakings to the Council of Ministers;

(4) to approve or render a decision on the non-application of selection by bidding process under section 38;

(5) to give advice or opinions to the Minister prior to the enactment of a Royal Decree under section 7;

(6) to prescribe rules and procedures for private investments in projects having a lesser value than the amount stated in section 23 which shall be binding on state agencies under section 58;

(7) to issue Notifications as provided in this Act;

(8) to prepare a report as provided in this Act;

(9) to give decisions on problems pertaining to the implementation of this Act;

(10) to perform other duties provided by this Act or other law as the powers and duties of the Committee or as entrusted by the Council of Ministers.

Section 17. The Committee shall have the power to appoint a subcommittee or any person who has expertise or experience which would be beneficial to the performance of duties by the Committee to perform a duty or any act as entrusted by the Committee.

The performance of duties by a subcommittee or person under paragraph one shall be as prescribed by the Committee.

Section 14 shall apply to subcommittee *mutatis mutandis*.

Section 18. The State Enterprise Policy Office shall be responsible for the secretarial tasks of the Committee and shall have the following powers and duties:

- (1) to prepare a draft Strategic Plan for submission to the Committee;
- (2) to study and analyse projects and submit opinions to the Committee for consideration and approval;
- (3) to prepare draft monetary or fiscal measures or approaches for supporting private investments in state undertakings for submission to the Committee;
- (4) to submit opinions to the Committee in the case of a non-application of the selection by bidding process under section 38;
- (5) to prepare draft rules and procedures for private investment in state undertakings in projects having a lesser value than the amount stated in section 23 for submission to the Committee pursuant to section 58;
- (6) to engage in technical collaboration, research and development with state agencies, research and development agencies and private agencies, both domestic and foreign, which performs duties pertaining to private investment in state undertakings and to arrange for the development of personnel competencies in state agencies to ensure knowledge and expertise for the efficient compliance of this Act;

STATE ENTERPRISE POLICY OFFICE

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(7) to study, research and prepare a database relating to private investment in state enterprises for dissemination, provision of education and advice to state agencies and the general public in order to promote and build an understanding of private investments in state undertakings;

(8) to consider and determine approaches relating to the implementation of this Act;

(9) to report problems and obstacles arising from the implementation of this Act to the Committee;

(10) to perform other duties provided by this Act or other law as the powers and duties of the Office or as entrusted by the Council of Ministers, Minister or Committee.

Chapter 3

Strategic Plan for Private Investments in State Undertakings

Section 19. There shall be a Strategic Plan for Private Investments in State Undertakings which is consistent with the provisions on directive principles of fundamental state policies under the Constitution of the Kingdom of Thailand and the National Economic and Social Development Plan. Each Strategic Plan shall cover a period of five years.

A Strategic Plan under paragraph one must at least contain the following details:

(1) policies for investments in various fields of state undertakings, including the type and description of undertakings which are appropriate for private investment, along with the priority and urgency as well as the order of implementation of the undertakings; the operational competencies of the relevant state and private agencies shall also be taken into account;

(2) private investment targets and implementation timeframes;

(3) approximations of state and private investments which must also state the approximate annual budgetary expenditures of the state;

(4) links between undertakings suitable for private investment.

STATE ENTERPRISE POLICY OFFICE

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Section 20. When preparing a Strategic Plan, ministers of the Responsible Ministries shall submit a policy framework for private investments in state undertakings under the respective ministry's responsibilities to the Committee within the time limit prescribed by the Committee as information for the Committee's preparation of the Strategic Plan.

A policy framework submitted by each ministry shall state an overview, project descriptions and priority of state undertakings under the ministry's responsibility which are necessary or suitable for private investment.

When preparing a Strategic Plan, there shall be a hearing of opinions from relevant state agencies and members of the public in accordance with rules and procedures prescribed by Notification of the Committee.

Section 21. Once the Committee has drawn up a Strategic Plan under section 19, a submission shall be made to the Council of Ministers for approval and promulgated by publication in the Government Gazette.

The promulgated Strategic Plan shall be binding on state agencies in the preparation and proposal of projects which are consistent with the Strategic Plan. The Council of Ministers and Committee must principally adhere to the Strategic Plan when considering the approval of a project.

In the case where it is expedient to revise the Strategic Plan, the Council of Ministers may entrust the Committee or the Committee may propose to the Council of Ministers for the approval of revisions to the Strategic Plan. Upon the approval of the Council of Ministers, the revised Strategic Plan shall be published in the Government Gazette.

Section 22. Upon the lapse of three years from the promulgation of a Strategic Plan, the Committee shall prepare a report on implementation results under the Strategic Plan for submission to the Council of Ministers. The report must state the problems and obstacles of implementation and propose approaches for remedying or preventing such problems and obstacles which would be applied to the preparation of the subsequent Strategic Plan.

Chapter 4

Project Proposal

Section 23. A project having a value of at least one billion baht or a higher value prescribed by Ministerial Regulation must comply with the rules and procedures prescribed by this Act.

The rules and procedures for appraising the value of a project under paragraph one shall be as prescribed by Notification of the Committee.

Section 24. When proposing a project, the host agency must submit a project appraisal report containing the details prescribed by Notification of the Committee.

The Notification under paragraph one must at least contain the following details:

(1) rationale, necessity and benefits of the project, including consistency with the Strategic Plan;

(2) implementation cost; in the case of a project which is partly funded by the state budget, the required state budget for the entire duration of the project shall also be stated;

(3) comparison of the cost and value for money between the use of state budget or agency's budget and private investment;

(4) alternative forms of private investment, including interests and readiness of the private sector in each form of investment;

(5) impact of the project;

(6) related risks and approaches for managing the risks of the project;

(7) in the case where a host agency intends to fund the project from the agency budget, the study shall also show the agency's financial standing, source of funding, overall budgetary obligation committed to other projects and the ability to obtain funding for the project without affecting the overall financial standing of the agency.

Section 25. A host agency must hire a consultant for preparing a project appraisal report and the consultant must prepare an independent report containing the details prescribed by the Committee under section 24 as well as other essential substances as deemed appropriate by the consultant. The host agency shall also submit the consultant's report for consideration pursuant to section 26.

The qualifications and disqualifications of a consultant shall be as prescribed by Notification of the Committee.

The Office shall provide a list of consultants who have the qualifications and do not have the disqualifications under paragraph two in accordance with rules and procedures prescribed by the Minister.

Section 26. A host agency shall submit the project appraisal report to the Responsible Minister for consideration and approval. The consideration must be completed within sixty days as from the receipt of the proposal from the host agency. Thereafter, the host agency shall submit the matter to the Office.

Within thirty days from the receipt of the project appraisal report, the Office may request the host agency to amend or revise details of the project or submit additional relevant documents, and if such action necessitates a corresponding amendment or revision of the project appraisal report, the host agency shall concurrently make the amendment or revision and submit the same to the Responsible Minister for reconsideration and re-approval. In this case, the host agency shall submit the project appraisal report to the Office within the period prescribed by the Office.

Section 27. Upon receiving a project appraisal report and all the relevant documents, the Office shall take the following action:

(1) if the Office concurs with the project, the project shall be submitted to the Committee for consideration and approval in principle;

(2) if the Office disagrees with the project, notice of the opinion shall be given to the Responsible Minister and host agency, and if the Responsible Minister disagrees with the Office's opinion, the matter shall be submitted to the Committee for decision.

When making a submission under (1) or (2), the opinions of the Office of the National Economic and Social Development Board and relevant agencies shall be concurrently submitted for consideration, and in the case where a project requires expenditure from the state budget, the opinion of the Bureau of the Budget shall also be submitted for consideration.

The Office shall complete its consideration of a project under this section within sixty days as from the receipt of the project feasibility study report and all relevant documents. Upon the expiration of such period, the Office shall be deemed to concur with the project.

Section 28. If a project requires an expenditure of state budget or agency budget, or incurrence of debts by way of a loan or guarantee of the Ministry of Finance for funding the project, upon the Committee's grant of approval in principle of the project, the project shall be submitted to the Council of Ministers for approval of the project as well as the expenditure limit or project debt limit. The Council of Minister's approval shall be deemed as an approval under the relevant provisions of the law on budgetary procedures, law on national social and economic development or law on public debt management, as the case may be.

Section 29. In the case where the Office finds that a state agency has powers and duties in relation to a state undertaking which has been designated under the Strategic Plan as an undertaking suitable for private investment but the said state agency has not proposed a project for private investment, the Office shall conduct a preliminary appraisal of the project's feasibility for private investment and coordinate with the state agency concerned for a project proposal. Upon the completion of a project appraisal report under section 24 by the said state agency, in its capacity as the host agency, a submission shall be made to the Responsible Minister for consideration before submission to the Office. Section 26, section 27 and section 28 shall apply *mutatis mutandis*.

In the case where the Office finds that there are more than one relevant agencies and an agreement cannot be reached, a submission shall be made to the Committee to determine the agency most responsible for the state

undertaking in which a private investment is to be made as the host agency and the relevant agencies shall comply therewith.

When appraising the feasibility of a project under paragraph one, the Office may hire a consultant having the qualifications and not having the disqualifications under section 25.

When hiring a consultant under paragraph three, if the Office has not received appropriations from the state budget or has insufficient funding for implementation, the Office may request for an appropriation from the Fund as consultancy fees.

Section 30. In the case of a project involving an undertaking which has the description and falls within type and field stated in the Strategic Plan, but the state agency making the project proposal wishes to fund the project entirely by the use of the state budget or the state agency's budget, the state agency shall compare the costs, risks and value for money of implementation with the case of private investment and submit the same to the Committee for consideration along with the project proposal.

In the case where the Committee finds that private investment is appropriate, the state agency submitting the project proposal shall comply with this Act.

In the case where the Committee concurs with the state agency submitting the project proposal, a submission shall be made to the Council of Ministers for further approval.

The comparison of costs, risks and value for money of implementation under paragraph one shall be in accordance with rules prescribed by Notification of the Committee.

Section 31. In the case where a government agency, state enterprise, local administrative organisation or other state agency intends to perform a state undertaking and the Council of Ministers passes a resolution on private investment in the state undertaking, such state agency shall implement the resolution of the Council of Ministers and comply with this Act.

Chapter 5

Project Implementation

Section 32. An invitation to tender, investment tender documents, procedures for inviting tenders, selection procedures of the selection committee, bid bonds and performance bonds, as well as other rules necessary for private investment shall be as prescribed by Notification of the Office with the approval of the Committee.

An invitation to tender under paragraph one must also contain the following headings:

- (1) tender document fee;
- (2) investment bid appraisal fee;
- (3) investment contract signing fee.

Section 33. Upon the Committee granting approval in principle for a project or upon the Council of Minister's approval of a case under section 28, the host agency shall prepare a draft invitation to tender for private investment, draft terms of reference and draft contract for the portion of the project involving private investment.

The host agency may hire a consultant having the qualifications and not having the disqualifications prescribed by Notification of the Committee to prepare the draft invitation to tender for private investment, draft terms of reference and draft investment contract.

Section 34. A draft investment contract under section 33 must contain the standard contract terms for investment contracts as prescribed by Notification of the Office with the approval of the Committee, which must at least contain the following details:

- (1) term of the project;
- (2) provision of services and operation of the project;

(3) service fee, payment terms of the private party or host agency or returns to be conferred by the private party to the host agency;

(4) changes to the service description under the project, changes of contractual party, contractor, sub-contractor and assignment of claims;

(5) project assets, including the ownership and valuation of project assets;

(6) force majeure events and the consequences of a force majeure event, including payment of compensation;

(7) causes for contractual termination, notice of contractual termination and payment of damages;

(8) guarantees, insurance and indemnities;

(9) dispute resolution.

Section 35. A host agency shall appoint a selection committee consisting of a representative of the host agency as chairman, a representative of the Bureau of the Budget, a representative of the State Enterprise Policy Office, a representative of the Office of the Attorney-General and not more than four qualified persons as members and there shall be a representative of the host agency as a member and secretary.

A qualified member under paragraph one must be a person who possesses knowledge, expertise and experience which would be directly beneficial to the consideration of the project and must have the qualifications and not have the disqualifications under section 10.

Section 36. A selection committee shall have the following powers and duties:

(1) to consider the approval of the draft invitation to tender for private investment, draft terms of reference and draft investment contract;

(2) to set the bid bond and performance bond;

(3) to negotiate and select the private entity for investment;

(4) to require the host agency or private entity to give an explanation or submit relevant information or documents;

(5) to consider taking other actions related to the project as deemed appropriate.

Section 14 and section 15 shall apply to the selection committee *mutatis mutandis*.

Section 37. A host agency may hire a consultant having the qualifications and not having the disqualifications prescribed by Notification of the Committee to assess the risks and propose approaches to managing risks, as well as to support the performance of functions of the selection committee.

Section 38. In a selection of private entities for investment, if the host agency and selection committee are in agreement that selection by bidding is inappropriate, a submission shall be made to the Office for consideration. If the Office concurs, the matter shall be submitted to the Committee for approval.

In the case where the host agency and selection committee are in disagreement on the inappropriateness of selection by bidding, a submission shall be made to the Office for consideration. If the Office finds that selection by bidding is appropriate, the selection by bidding process shall apply. However, if the Office finds that selection by bidding is inappropriate, the matter shall be submitted to the Committee for decision.

Section 39. Upon any invitation to tender for private investment, if there is only one tender, or there are several tenders but only one tender meets the requirements of the investment tender documents, if the selection committee finds it beneficial to the state, further action shall be taken in accordance with the processes provided under this Act.

Section 40. Within fifteen days of obtaining the private entity selection result and negotiation result, and a draft investment contract has been prepared with the private entity selected for investment, the selection committee shall proceed as follows:

(1) present the private entity selection result, negotiation issues on state benefits, draft investment contract that has been negotiated with the private entity selected for investment and relevant documents to the Office; the Office shall give an opinion on the private entity selection and public monetary and fiscal obligations, and submit the opinion along with relevant evidence to the Responsible Minister within forty-five days from the receipt of private entity selection result from the selection committee; and

(2) submit the draft investment contract that has been negotiated with the private entity selected for investment to the Office of the Attorney-General for review; the Office of the Attorney-General shall complete the review and submit the reviewed draft investment contract to the Responsible Minister within forty-five days from the receipt of the draft investment contract.

Section 41. Upon receiving the opinion and documents as well as the draft investment contract under section 40, the Responsible Minister shall give an opinion on the entire matter and submit the same to the Council of Ministers for consideration within thirty days.

Section 42. After examining the private entity selection result, public monetary and fiscal obligations, draft investment contract reviewed by the Office of the Attorney-General, as well as the opinion of the Responsible Minister, if the Council of Ministers disagrees with the proposal, the matter shall be returned to the Responsible Minister who shall notify the selection committee reconsideration. Section 40 and section 41 shall apply *mutatis mutandis*. The outcome of the revision shall then be submitted to the Council of Ministers for decision.

Upon the Council of Minister's approval of the private entity selection result and draft investment contract, the host agency shall proceed to sign the investment contract with the private entity selected for investment.

Chapter 6

Supervision and Monitoring

Section 43. Upon signing the investment contract, the Responsible Minister shall appoint a supervisory committee consisting of a representative of the Responsible Ministry who is an official of the Responsible Ministry holding a higher level executive office, not being the host agency, as the chairman, a representative of the Office of the State Enterprise Policy Office, a representative of the Office of the Attorney-General and not more than four qualified persons appointed by the Responsible Minister as members, and a representative of the host agency who is an official, employee or executive officer of the host agency shall be a member and secretary.

A qualified member under paragraph one must be a person who possesses knowledge, expertise and experience which are beneficial to the supervision and monitoring of the project.

Section 10, section 11, section 12 and section 13 shall apply to the qualified members under paragraph one *mutatis mutandis*.

Section 44. A supervisory committee shall have the following powers and duties:

(1) to monitor and supervise the project to ensure that operations are conducted in accordance with the investment contract, operational plan under the investment contract and plan for resolution of potential problems which may arise from the project implementation;

(2) to consider proposing approaches to resolving problems arising from project implementation to the host agency which may involve the host agency hiring a consultant to analyse the approach to resolving potential problems which may arise from the project implementation and to prepare a plan for resolution of potential problems which may arise from project implementation;

(3) to require the host agency or private contractual party to give an explanation or submit relevant documents;

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(4) to report operational results, progress, problems and approaches to resolving problems to the Responsible Minister for acknowledgment and to submit a copy of the report and relevant documents to the Office;

(5) to consider amendments to the investment contract pursuant to Chapter 7.

The qualifications and disqualifications of a consultant under (2) shall be as prescribed by Notification of the Committee.

The period for reporting under (4) shall be as prescribed by the supervisory committee, which shall be at least once every six months.

Section 14 and section 15 shall apply to the supervisory committee *mutatis mutandis*.

Section 45. For the benefit of resolving potential problems which may arise from the implementation of a project, the Office may instruct the host agency to prepare a plan for resolving potential problems which may arise from the project implementation and also instruct the private entity to prepare an investment contract compliance plan.

During the implementation of an investment contract, if there occurs an event which prevents compliance with an investment contract, the host agency and private entity shall propose an approach for resolving problems to the supervisory committee for determination as an approach to resolving problems.

Section 46. In the case where a host agency neglects or fails to comply with a binding condition under an investment contract, the supervisory committee shall submit a report together with an opinion to the Responsible Minister in order to instruct the host agency to comply with the investment contract.

In the case where the Responsible Minister fails to proceed under paragraph one, the supervisory committee shall report to the Office in order to make a submission to the Committee for consideration, and if it is a serious case, the Committee shall submit the matter together with an opinion to the Council of Ministers for consideration.

Chapter 7

Contractual Amendment and New Contract

Section 47. In the case where an investment contract amendment is necessary, the host agency shall submit the rationale and necessity for requesting the amendment to the supervisory committee for consideration.

In the case where the supervisory committee finds that the amendment of the investment contract does not involve an essential substance, the supervisory committee shall consider the proposed amendment and notify the Responsible Minister.

In the case where the supervisory committee finds that the amendment of investment contract involves an essential substance, the host agency shall also submit the proposed amendment issues, impact of investment contract amendment and other relevant details to the supervisory committee for consideration. If the supervisory agrees with the amendment, the host agency shall submit the draft investment contract to the Office of the Attorney-General for review before forwarding the supervisory committee's opinion along with the new draft investment contract as reviewed by the Office of the Attorney-General to the Responsible Minister for submission to the Council of Ministers for approval.

The Committee shall issue a Notification to prescribed the characteristics of investment contract amendments which are amendments to the essential substance.

A host agency may hire a consultant having the qualifications and not having the disqualifications prescribed by the Committee to give advice on the consideration of investment contract amendments.

Section 48. A host agency shall prepare a plan for operating a state undertaking subsequent to the expiration of investment contract term by comparing the operation of the state undertaking in the case of operations by the state, the case of private investment and the case of investments by the current private entity, which shall be submitted to the Responsible Minister at least five years prior to the

expiration of the investment contract after taking into account the benefits of the state and continuity of state undertaking operations. The plan shall be submitted to the Responsible Minister who will consider making a submission to the Committee and the Committee shall then consider and submit an opinion to the Council of Ministers.

In the case where the Council of Ministers passes a resolution to instruct that the operation of a state undertaking subsequent to the expiration of an investment contract be implemented by private investment, and if it appears that the project has the value prescribed under section 23, the host agency shall proceed as in a new project and shall commence from the process under Chapter 4, Project Proposal. A project appraisal report containing the details under section 24(4), (5) and (6) shall be submitted.

Chapter 8

Private Investment in State Undertaking Promotion Fund

Section 49. A fund shall be established within the Ministry of Finance called the “Private Investment in State Undertaking Promotion Fund” to support the preparation of a Strategic Plan and support a state agency in making a project proposal consistent with the Strategic Plan, preparation of a project appraisal report and hiring of a consultant.

Section 50. The Fund shall consist of the following monies and properties:

- (1) financial grant from the government or receipts from the annual expenditure budget;
- (2) tender document sale fees, investment bid appraisal fees and investment contract signing fees;
- (3) monies or properties obtained in the course of the Fund’s operations;
- (4) monies or properties donated or granted to the Fund;

STATE ENTERPRISE POLICY OFFICE

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(5) yields of the monies or properties of the Fund.

Monies and properties under paragraph one shall be remitted to the Fund without having to remit the same to the treasury under the law on budgetary procedures and law on treasury reserve.

Section 51. The Fund's monies may be disbursed as payment for the following expenses:

- (1) conduct of factual surveys and revisions of the Strategic Plan;
- (2) hire of a consultant under section 25, section 29, section 33 and section 37;
- (3) expenses incurred from the administration of the Fund and other expenses incidental to the Fund's operations.

Section 52. The Fund's monies shall be deposited with the Ministry of Finance or a state enterprise bank as specified by the Fund Committee.

Section 53. There shall be a committee called the "Private Investment in State Undertaking Promotion Fund Committee" consisting of the Permanent Secretary of the Ministry of Finance as Fund Committee Chairman, Secretary-General of the National Economic and Social Development Board, Budget Director of the Bureau of the Budget and Comptroller-General as Fund Committee Members.

The Director-General of the State Enterprise Policy Office shall be a Fund Committee Member and Secretary and an official of the Office appointed by the Director-General of the State Enterprise Policy Office shall be the Assistant Secretary.

Section 54. The Fund Committee shall have the following powers and duties:

- (1) to supervise the administration and management of the Fund to ensure consistency with the Fund's objectives;

(2) to prescribe rules, conditions and procedures for requesting appropriations from the Fund;

(3) to approve disbursements from the Fund as provided under this Act;

(4) to issue regulations or orders relating to the administration of the Fund's undertakings, rules and procedures for the safekeeping of and withdrawals from the Fund, Fund administration expenses and other expenses related to the Fund's operations.

Section 14 shall apply to the Fund Committee *mutatis mutandis*.

Section 55. The Fund's accounting period shall adhere to the budget year and the Fund's accounts shall comply with the accounting standards for public agencies as prescribed by the Ministry of Finance.

Section 56. The Fund Committee shall report the performance result and financial standing of the Fund to the Committee at least once each year.

Section 57. The Fund Committee shall prepare a financial statement showing the performance result and financial standing of the Fund, which shall be submitted to the Office of the Auditor General for audit within ninety days of the end of the accounting year.

The Fund Committee shall submit the financial statement as audited by the Office of the Auditor General along with the audit report to the Committee for consideration.

Chapter 9

Miscellaneous Provisions

Section 58. The Committee shall prepare a Notification to prescribe rules and procedures for private investments in projects having a value lower than the amount stated in section 23 as a directive for state agencies. If the Office finds that a project for private investment has a value lower than the amount stated in section 23 but is a project of significance and consistent with the Strategic Plan, and that implementation under this Act is expedient, the Office shall submit an opinion to the Committee to instruct the host agency to proceed in accordance with the stages prescribed under this Act in which case section 29 shall apply *mutatis mutandis*.

Section 59. For the benefit of preparing a database on investment contracts, a host agency shall submit a copy of the investment contract and documents related to the project to the Office within thirty days of signing the investment contract or amendment to the investment contract.

Section 60. In the case where it appears to the Office that a project has not proceeded properly as provided under Chapter 4, Project Proposal, or Chapter 5, Project Implementation, the Office shall notify the host agency to give an explanation of facts and appropriate approaches for submission to the Committee for direction. In any case, the continuity of public services and public impact shall also be taken into account.

In the case where the Committee finds it expedient to terminate or amend an investment contract, a submission shall be made to the Council of Ministers for approval.

In the case where the Committee allows operations under the investment contract to continue without amendment or an amendment has been made to the investment contract pursuant to paragraph two, the provisions of Chapter 6, Supervision and Monitoring, shall apply to the operations.

STATE ENTERPRISE POLICY OFFICE

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Section 61. Qualified members under section 35 and section 43 must be persons stated in the list of experts on various fields drawn up by the Office in accordance with the rules prescribed by Notification of the Office.

Section 62. When hiring of a consultant under section 25, section 33 or section 37, if the host agency has not received an appropriation from the state budget or has insufficient budget for operations, the host agency may request for an appropriation from the Fund as expenses for hiring a consultant.

A request for appropriation under paragraph one shall be in accordance with the rules and procedures prescribed by the Fund Committee.

Section 63. In the case where a host agency receives an appropriation from the Fund for hiring a consultant under section 25, section 33 or section 37, the host agency shall remit the tender document sale fee, bid appraisal fee and investment contract signing fee under section 32 paragraph two to the Fund within fourteen days as from the receipt of the fees.

Section 64. The Committee shall issue a Notification to prescribe the descriptions of private entities which are unsuitable for investment in a state undertaking and persons who are unsuitable to act as consultants. Those private entities or persons shall not have the right to be selected as a party to a contract for investment in a state undertaking or to be appointed as a consultant under this Act, as the case may be.

A private entity and person under paragraph one shall also include a director or authorized management personnel of such private entity and person.

Section 65. The Private Investments in State Undertakings Policy Committee, selection committee, supervisory committee, Private Investments in State Undertakings Promotion Fund Committee, subcommittees and experts appointed under section 17 shall receive remuneration as prescribed by the Minister with the approval of the Council of Ministers.

Chapter 10

Penalties

Section 66. Any member of the Committee or selection committee or supervisory committee who violates section 15 or section 36 paragraph two in conjunction with section 15 or section 44 paragraph four in conjunction with section 15 shall be liable to a term of imprisonment not exceeding three years or a fine not exceeding six hundred thousand baht or both.

Transitory Provisions

Section 67. Within sixty days as from the effective date of this Act, the Minister shall submit a draft Notification on rules and procedures for selection of a Qualified Member under section 9 to the Council of Ministers for approval and shall complete the selection and appointment of Qualified Members within sixty days as from the issuance of such Notification.

The Ministerial Regulations and Notifications which are necessary for the implementation of this Act shall be issued within one hundred and eighty days as from the effective date of this Act.

Section 68. In the case where a project has been proposed in the period of one hundred and eighty days as from the effective date of this Act, the rules under the Act on Private Participation in State Undertakings B.E. 2535 (1992) shall apply *mutatis mutandis*, and upon the issuance of Ministerial Regulations and Notifications which are necessary for the implementation of this Act, the remaining proceedings shall be in accordance with this Act.

Section 69. A project which is pending under the Act on Private Participation in State Undertakings B.E. 2535 (1992) on the effective date of this Act shall be deemed to be a project under this Act and shall proceed as follows:

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(1) for a project pending under Chapter 2, Project Proposal, or Chapter 3, Project Implementation, of the Act on Private Participation in State Undertakings B.E. 2535 (1992), the host agency shall continue to comply with the provisions in such chapters until completion and shall proceed to the next stage in accordance with this Act;

(2) for a project pending under Chapter 4, Supervision and Monitoring, of the Act on Private Participation in State Undertakings B.E. 2535 (1992), the Responsible Minister shall appoint a supervisory committee within one year as from the effective date of this Act; and while a supervisory committee under this Act has not yet been appointed, the coordinating committee under section 22 of such Act shall assume the duties of a supervisory committee for such project until the appointment of a supervisory committee under this Act.

Section 70. Within one hundred and twenty days of the effective date of this Act, the host agency of a project pending under the Act on Private Participation in State Undertakings B.E. 2535 (1992) shall prepare an plan for state undertaking subsequent to the expiration of the investment contract, and in the case where an investment contract is to be awarded to the current private entity, a submission shall be made to the Responsible Minister for consideration and further submission to the Council of Ministers, except where the remaining term of such project under the investment contract exceeds five years, in which case section 48 shall apply *mutatis mutandis*.

Section 71. A host agency which has entered into a contract for private participation in state undertaking under the Act on Private Participation in State Undertaking B.E. 2535 (1992) and project implementation is still pending shall submit a copy of the contract and minutes of the coordinating committee under section 22 of such Act to the Office within one hundred and twenty days as from the effective date of this Act.

Section 72. In the case where it appears that a project has to comply with the Act on Private Participation in State Undertaking B.E. 2535 (1992) but has failed to do so or has been improperly implemented or has not fully satisfied any stage requirement and the matter has not yet been submitted to dispute resolution under the contract or legal proceedings commenced in court, the Responsible Minister shall appoint a committee consisting of the Permanent Secretary of the Responsible Ministry as chairman, a representative of the Office of the Council of State, representative of the Office of the National Economic and Social Development Board, representative of the Bureau of the Budget, representative of the Office of the State Enterprise Policy Office and representative of the Office of the Attorney-General as members and a representative of the host agency who is an official, employee or executive officer of the agency shall be a member and secretary to determine a suitable approach, which includes the termination, amendment and continued application of the contract.

The committee under paragraph one shall submit the outcome of the consideration and opinion to the Responsible Minister in order that a submission be made to the Council of Ministers for direction. The provisions of section 60 paragraph one shall also be taken into consideration.

Section 14 shall apply to the committee under paragraph one *mutatis mutandis*.

The committee under paragraph one shall receive remuneration as prescribed by the Minister with the approval of the Council of Ministers.

Countersigned by:
Yingluck Shinawatra
Prime Minister

Note: - The reasons for promulgating this Act are as follows. The law on private participation in state undertakings, which has been in force since the year B.E. 2535 (1992), contains unclear rules giving rise to numerous problems on the application and interpretation of the law. The said law also fails to provide for procedures and rules on certain significant processes, in particular, the amendment of contracts. Moreover, at present, Thailand is in need of infrastructure constructions and various other forms of public services. These undertakings necessarily require a substantial budget, and because of this, the state has been unable to sufficiently meet the demands of the people. Private participation in state undertakings for the provision of the infrastructure and public services offers another alternative for the provision of infrastructure and public services, whilst also economising the state budget. This enables the worthwhile and efficient use of state resources and thereby enhancing the country's competitiveness and allows the liberalisation of trade and investments with other countries. It is therefore expedient to revise the law on private participation in state undertakings in order to provide for the determination of clear and certain state policies on private investments in state undertakings, the prescription of complete rules and processes for private investments in state undertakings which are transparent and consistent with state policies and monetary and fiscal principles, the promotion and support of private investment in state undertakings, including the designation of an agency responsible for setting standards, supervising, promoting and supporting joint investments between the state and private sectors, as well as the development of the country's monetary and fiscal disciplines in private investment to avoid long-term impact on the financial and fiscal stability of the country. It is therefore necessary to enact this Act.