



**Small and Medium Enterprise Development Bank of Thailand Act,
B.E. 2545 (2002)**

[OFFICIAL EMBLEM]

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BHUMIBOL ADULYADEJ, REX.

Given on the 1st Day of November B.E. 2545 (2002)

Being the 57th Year of the Present Reign

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

Whereas it is expedient to have the law on the Small and Medium Enterprise Development Bank of Thailand;

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 “Small and Medium Enterprise Development Bank of Thailand Act, B.E. 2545 (2002)”.

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

Section 3 The Small Industry Finance Corporation Act, B.E. 2534 (1991) shall be repealed.

Section 4 In this Act:

“Bank” means the Small and Medium Enterprise Development Bank of Thailand;

“Small and Medium Enterprises” mean any business regarding goods production, service, wholesaling, retailing or other businesses of which their number of employees, value of fixed assets or paid-up registered capital meet the requirements or other conditions prescribed by the Board;

“Capital Fund” means:

- (1) paid-up capital;
- (2) share premiums received by the Bank;
- (3) money received by the Bank from issuance of warrants to purchase shares of the Bank;

(4) reserve allocated from net profits;

(5) remaining net profit after the allocation;

(6) reserve from asset revaluation;

(7) money received by the Bank from issuing long-term debt instruments with a term to maturity of over five years of which right of its holders rank higher than ordinary creditor;

“Monetary Instrument” means a bill, debenture, bond and other instruments prescribed by the Board;

“Company” means company limited and public company limited;

“Board” means the Board of Directors of the Small and Medium Enterprise Development Bank of Thailand;

“Director” means a director of the Small and Medium Enterprise Development Bank of Thailand;

“Manager” means the manager of the Small and Medium Enterprise Development Bank of Thailand;

“Minister” means the Minister who is on duty according to this Act;

Section 5 Finance Minister and Industry Minister shall be in charge of this Act and shall have the power to issue Ministerial Regulations and Notifications for the execution of this Act on matters related to their authority and function.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

Establishment

Section 6 There shall be the establishment of a bank called “Small and Medium Enterprise Development Bank of Thailand”.

The Bank shall be a juristic person.

Section 7 The head office of the Bank shall be in Bangkok Metropolis or nearby provinces. The Bank may establish its branch or representative office at any location inside and outside the Kingdom but the establishment of any branch or representative office outside the Kingdom shall be approved by the Minister.

Section 8 The share capital of the Bank shall be ten billion Baht and divided into one hundred million shares with the par value of one hundred Baht per share. The Bank shall sell its shares to the Ministry of Finance, financial institutions or other persons in accordance with its regulations.

Section 9 In case that it is necessary for the Bank to change the par value of share or share capital, the Bank shall make the change under the resolution of the shareholders' meeting.

Section 10 Liability of shareholders shall be limited to the value of shares held thereby.

CHAPTER II

Objective

Section 11 The objective of the Bank is to engage in the business of developing, promoting, assisting and supporting the establishment, management, expansion or improvement of small and medium enterprises by granting of credits, guaranteeing, participating in investment, giving recommendations, suggestions, or providing other necessary services thereto under the provisions of this Act.

Section 12 The Bank shall have the authority to conduct its business subject to its objectives as prescribed in Section 11, including the authority to:

- (1) lend or joint with other persons to lend money to small and medium enterprises, with or without security;
- (2) jointly invest in small and medium enterprises;
- (3) provide suggestions on finance, technique, academics, development of production, marketing, administration and management for small and medium enterprises; and assist small and medium enterprises to obtain financial, administrative, managerial or technical service;
- (4) provide funds for the operations of the Bank;
- (5) hold proprietary right or ownership or real right, buy, supply, sell, dispose, hire, rent, hire purchase, put on hire-purchase, borrow, lend, mortgage or accept mortgage, pledge or accept pledge, use or accept property as security for the performance of obligation, exchange, transfer, accept transfer, appoint or accept to be agency or broker, or act in any manner whatsoever regarding any property or claim, and accept donated property;
- (6) open deposit accounts with other financial institutions as necessary for business operation of the Bank;
- (7) provide debt guarantee;
- (8) issue monetary instrument;
- (9) accept aval and accept or intervene to honor of bill;
- (10) purchase, purchase at a discount or rediscount, sell, sale at a discount or rediscount of monetary instrument, or accept transfer of claim from the beneficiary thereof;
- (11) collect interest, discount, fee and other service charges arising from lending of money, purchasing, purchasing at a discount or rediscount, guarantee and other services;

(12) engage in the business of foreign currency;

(13) establish a company to engage in the business that is directly beneficial to the Bank under an approval of the Minister;

(14) accept deposit subject to repayment on demand, or at the end of specified period with interest in accordance with the rate announced by the Bank of Thailand, but the acceptance of deposit from the public shall be approved by the Cabinet;

(15) be an agent of any government agency or state enterprise for payment, collection or accept payment of any type of money in which the Bank has been entrusted by such government agency or state enterprise to pay to, or collect or accept payment from any other persons, or to be an agent of other persons to do such act in accordance with the Bank's regulations;

(16) Spend cash surplus of the Bank in investment that brings in revenue as deemed appropriate by the Board;

(17) provide appropriate welfare for officials and employees of the Bank as well as their families;

(18) grant credits or provide other forms of financial services that are traditional practices of commercial banks or financial institutions as announced by the Minister;

(19) carry out other businesses that are related or in order to achieve the Bank's objective.

Section 13 The Bank shall not:

(1) invest in any business in which its Director, Executive or Manager is a partner, director, shareholder or stakeholder, whether directly or indirectly;

(2) grant credits to or secure any debts of, the following individual, partnership or company, or certify, give aval to, or intervene for, any bills in which the following individual, partnership or company is a drawer, maker or endorser:

(a) a Director, Executive or Manager;

(b) a spouse of a Director, Executive or Manager;

(c) a minor child of a Director, Executive or Manager;

(d) an ordinary partnership in which the person under (a), (b) or (c) is a partner;

(e) a limited partnership in which the person under (a), (b) or (c) is a partner with unlimited liability or is a partner with limited liability in an aggregate amount exceeding thirty per cent of the total capital of such limited partnership;

(f) a company in which the person is under (a), (b) or (c) or a partnership under (d) or (e) holds shares in an aggregate amount exceeding thirty per cent of the sold shares of such company;

(g) a company in which the person is under (a), (b) or (c) or a partnership under (d) or (e) or the company under (f) holds shares in an aggregate amount exceeding thirty per cent of the sold shares of such company;

(3) pay money or give asset to its Director, Executive, Manager, official or employee as commission or considerations for or due to any acts or businesses of the Bank other than meeting allowances or other benefits as determined by the Minister, annual bonus as prescribed by the Cabinet, monthly salary and other money which shall be paid in accordance with its regulations;

(4) purchase or permanently hold immovable property, except:

(a) for use as its place of business, or for use of its Manager, official and employee in business of the Bank;

(b) such property is acquired by debt repayment, securing of credit, or purchasing property that has been mortgaged or secured to the Bank as security for debt repayment in an auction.

All immovable property acquired by the Bank under (b) shall be disposed within five years from the date on which they have been acquired by the Bank or within a longer period of time as approved by the Minister, except where an approval of the Minister to use such property for the purpose as prescribed in (a) has been given.

The disposal of immovable property under the previous paragraph shall be made by an auction or by any other methods which bring about higher benefit to the Bank as deemed appropriate by the Board.

CHAPTER III

Board and Management

Section 14 There shall be a Board called the “Board of Directors of the Small and Medium Enterprise Development Bank of Thailand”, consisting of a Chairperson and not more than nine other Directors who are elected by the shareholders’ meeting. The Manager shall be ex officio Director.

The Board shall appoint either Manager, Deputy Manager or Assistant Manager as Secretary of the Board.

Section 15 Any person who has the following characteristics shall not be a Chairperson or director:

- (1) being an official or employee of the Bank, except the Manager;
- (2) being or having been bankrupted;
- (3) having been imprisoned by a final judgment of imprisonment except for an offence committed through negligence or a petty offence;
- (4) having been a Director, Manager, Deputy Manager, Assistant Manager of commercial banks or other financial institutions who performed any act or was involved in any act that resulted in revocation of license of such commercial bank or financial institution;
- (5) being a political official or holding any position in a political party, or being a political party official;
- (6) being an incompetent or quasi-incompetent.

Section 16 Director shall hold an office for a term of three years.

In case where an additional Director has been elected during the term of the previously elected Directors, the term of office of an additional Director shall be equal to the remaining term of the previously elected Directors.

Upon the end of term of office under paragraph one, if the new Director has not yet been elected, a Director whose term of office has expired shall remain in office until the completion of an election of the new Director.

A Director who vacates the office at the end of term may be reelected but not more than two consecutive terms.

Section 17 In addition to retirement under Section 16, a Director shall retire upon:

- (1) death;
- (2) resignation;
- (3) having any prohibited characteristics under Section 15;
- (4) resolution of the shareholders' meeting by votes of more than one-half of the number of shares of shareholders who are present at the meeting;
- (5) violation against Section 20.

Section 18 If a Director vacates office by any cause other than the expiration of the term, the Board shall appoint a person who has no prohibited characteristics under Section 15 to be a Director in its next meeting, provided that the term of office of a Director who vacates office is less than sixty days.

The resolution of the Board under paragraph one shall consist of votes of not less than three-fourths of the remaining number of Directors.

A person who is appointed as a Director under paragraph one shall hold office for the remaining term of office of a Director whom he/she has replaced.

Section 19 The Board's meeting shall consist of not less than one-half of the total number of Directors to constitute a quorum. If the Chairperson is unable to attend the meeting or unable to perform his/her duty, the attending Directors shall appoint one Director to as the Chairperson of the meeting.

The final decision of the meeting shall be based on a majority of votes and one Director shall have one vote. In case of equality of votes, the chairman of the meeting shall have an additional vote as a casting vote.

Section 20 Any Director, who has interest, whether directly or indirectly, in the matter that is considered by the meeting, shall inform his or her interest to the Board and shall not attend the meeting on such matter.

Section 21 The Board shall have the authority and function to formulate the policy and oversee general administration of the Bank's business under the objective stated in Section 11. Such authority and function shall include:

- (1) issuance of regulations on the Bank's shares;
- (2) issuance of regulations on money lending, debt guarantee, sale or sale by rediscount of bills to financial institutions, acceptance of pledges, acceptance of mortgages and other businesses of the Bank;
- (3) issuance of regulations on management and business operation of the Bank;
- (4) issuance of regulations on human resources management, remuneration and other expenses of the Bank;
- (5) issuance of regulations on procurement, finance, asset, accounting and internal audit of the Bank;
- (6) issuance of regulations on benefits of employee and official of the Bank and their families;
- (7) setup of branches or representative offices of the Bank.

Section 22 The Board may appoint the Executive Board, consisting of the Chief Executive and not more than three other Executives. The Manager shall be ex officio Executive.

The Executive Board appointed by the Board under paragraph one shall hold an office for a term of two years and the provisions of Section 15, paragraph two, three and four of Section 16, Section 17, Section 19 and Section 20 shall be applied mutatis mutandis to the prohibited characteristics, holding the office, retirement, meeting and performance of duty of the Executive Board.

Section 23 The Board shall select any person with qualification and without prohibited characteristics as follows as the Manager:

- (1) having Thai nationality;
- (2) having experience in management in accordance with the requirements and period as determined by the Board;
- (3) having knowledge or expertise regarding banking, economics, industry or law;
- (4) not having the prohibited characteristics under Section 15 (2), (3), (4), (5) or (6); and
- (5) not being civil servant, state enterprise officer, official or employee of other persons.

Holding of office, retirement and determination of other conditions for probation or working and performance appraisal of the Manager shall be in accordance with the employment agreement in which the Board determines each employment period of not more than four years. Upon the expiration of the employment period, the Board may renew the employment, but not more than two consecutive terms.

In employing the Manager, the Chairperson shall sign the employment agreement on behalf of the Bank.

Section 24 Executive Board shall have authority and responsibility in determining guidelines and methods of the Bank's operations in accordance with the policy and target as prescribed by the Board that must not violate the authority and function of the Manager under Section 25.

Executive Board shall report the performance result to the Board every three months.

Section 25 Manager shall have the authority and function to operate the Bank's business under the objective, policy and regulations as well as other businesses as determined by the Board or Executive Board.

Section 26 Manager shall be a superior of the Bank's officials and employees and have the authority and function under the Bank's regulations.

Section 27 As for businesses related to third party, Manager shall be the Bank's representative and in this manner, Manager shall authorize the Bank's official or employee to act on behalf of him/herself exclusively for any business under the Bank's regulations.

Section 28 When Manager position is vacated, or Manager is unable to perform his/her duty from time to time, Deputy Manager shall be acting Manager or act on behalf of Manager as the case may be.

In case that there is no Deputy Manager or Deputy Manager is unable to perform his/her duty, the Board shall appoint any of the Bank's official having the rank or position as specified by the regulations of the Bank to act as acting Manager or acting for Manager as the case may be.

A person who is acting Manager or acts on behalf of Manager shall have the same authority and function as Manager.

Section 29 For benefit of control and internal audit of the Bank, the Board shall appoint the Auditing Committee which consists of not more than five committees to inspect operations of the Bank and performance of Manager as assigned by the Board.

Section 30 While the Bank is in the status of state enterprise in accordance with the law on budgetary procedure, the Chairperson, Director and Executive shall be entitled to receive meeting allowance or other benefits as specified by the Minister.

Section 31 Director or Executive Director shall be liable to all damages against the Bank caused by violation against Section 13, except if he/she can prove that he/she was not involved in such act and such act had been carried out without the resolution of the Board's meeting or his/her objection at the meeting had been recorded in the minutes of the meeting or his/her objection letter had been submitted to the Chairperson within three days from the date that the minutes of the meeting had been approved.

CHAPTER IV

Supervision, Operation and Control

Section 32 While the Bank is in the status of state enterprise in accordance with the law on budgetary procedure, the Minister shall have the authority of general administration of the Bank's business. For this purpose, the Minister may order the Bank to give statement of fact and opinion, prepare report or object to any acts of the Bank which are contrary to the government's policy or the Cabinet's resolution, and determine supervision requirements, and have the authority to order the Bank to comply with the government's policy or the Cabinet's resolution and order an investigation regarding the Bank's operations.

When the Bank is not in the status of state enterprise in accordance with the law on budgetary procedure, the Finance Minister shall have the authority to determine the requirements on security supervision of the Bank and inspect the business, asset and debt of the Bank. For this purpose, the Finance Minister may assign the Bank of Thailand to perform such act, either entirely or partially.

Section 33 The Bank shall maintain the funds in proportion to asset, debt or obligation according to the requirements and methods prescribed by the ministerial regulations.

Section 34 In case that the Bank is damaged by the business operation according to the Minister's order under Section 32 or according to the agreement made by the Bank and the government, the Ministry of Finance may consider indemnification for the Bank as deemed appropriate with approval from the Cabinet. The Bank shall request for such indemnification in the next accounting year.

CHAPTER V
Shareholders' Meeting

Section 35 The Board shall hold the general shareholders' meeting once a year within one hundred and twenty days from the ending date of each accounting year to consider the following matters:

- (1) annual report of the Bank;
- (2) approval of balance sheet and profit and loss statement;
- (3) approval of allocation of net profit;
- (4) appointment of the annual auditor;
- (5) election of directors;
- (6) other matters

Section 36 The Board may call the extraordinary shareholders' meeting at any time as deemed appropriate.

Section 37 The quorum of the general and extraordinary shareholders' meetings shall consist of shareholders or their proxy with a total number of shares of not less than one-thirds of the total number of shares sold.

CHAPTER VI
Money Lending

Section 38 Money lending to small and medium entrepreneurs shall be in accordance with the regulations of the Bank. Such regulations shall specify qualifications of the borrower, purpose of lending, repayment period, ceiling of loan, requirements or exemption on loan security, interest rate, loan repayment and other related matters.

CHAPTER VII
Financing

Section 39 In financing for operations of the Bank, the Bank shall have the authority:

- (1) to borrow money as deemed appropriate by the Board;
- (2) to issue monetary instruments;
- (3) to sell or sell at a discount of bills to financial institutions according to the Bank's regulations;
- (4) to receive subsidy from the government or other persons.

Section 40 While the Bank is in the status of state enterprise in accordance with the law on budgetary procedure, the Bank may ask the government to guarantee loans that the Bank borrows from foreign or domestic sources but the amount of loans to be guaranteed by the government and the principal of loans that has been guaranteed by the government shall not exceed twelve times the Bank's capital fund.

Conversion of foreign currency into Thai Baht to calculate the sum of the loans under paragraph one shall be based on the foreign exchange rate announced by the Bank of Thailand on the date of executing the loan agreement.

CHAPTER VIII

Allocation of Net Profit

Section 41 The remaining annual net profit after the allocation shall be paid as dividend, pension and annual bonus under Section 30 and the reserve shall be transferred to the accumulated profit account.

Section 42 Every time that the Bank pays dividend, the Bank shall allocate its net profit as a reserve of not less than a half of the paid dividend.

When the reserve stated in paragraph one is equal to the value of paid-up shares or more, the Bank may refrain from allocating or reduce the amount of profit to be allocated as the reserve.

CHAPTER IX

Auditing and Reporting

Section 43 The Board shall hold an audit of the Bank's account at least once a year.

Section 44 The Board shall propose the balance sheet and profit and loss statement certified by the auditor for consideration of the shareholders' meeting within one hundred and twenty days from the ending date of each accounting year along with the annual report of the Bank.

Section 45 The Bank shall propose the annual report, balance sheet and profit and loss statement approved by the shareholders' meeting to the Cabinet and National Assembly within one hundred and eighty days from the ending date of each accounting year.

The report stated in paragraph one shall specify the Bank's performance in the past year, explanation on the Bank's policy and plans to be implemented in the following year.

CHAPTER X
Miscellaneous Provisions

Section 46 When the Board considers that the Bank has readiness and stable position and the shareholders' meeting gives its resolution, the Board shall propose the opinion to the Minister for the Cabinet's approval and the provision on public offering of shares, shares and shareholders, shareholders' meeting, accounts and reports and debentures according to the law on public company limited shall be enforced mutatis mutandis on the Bank.

Transitory Provisions

Section 47 All businesses, assets, debts, capital, accumulated profits, reserves, including rights and responsibilities of the Small Industry Finance Corporation pursuant to Small Industry Finance Corporation Act, B.E. 2534 (1991) existing on the date that this Act comes into force shall be transferred to the Bank.

The transferred capital under paragraph one shall be the Bank's share capital and shareholders of the Small Industry Finance Corporation shall be shareholders of the Bank according to the number of transferred shares under paragraph one. The share certificate of the Small Industry Finance Corporation shall be the Bank's share certificate until the new share certificate is issued to the shareholders.

Section 48 In an initial state, the Board of the Small Industry Finance Corporation shall act as the Board and call the shareholders' meeting to elect the Board within thirty days from the date that this Act comes into force.

Upon election of the Board, the authority and function of the Board of the Small Industry Finance Corporation under paragraph one shall be terminated.

Section 49 In an initial state, the General Manager of the Small Industry Finance Corporation shall be the Bank's Manager with the requirements on the working conditions, retirement, termination, performance appraisal and wage or other benefits as in the employment agreement made with the Small Industry Finance Corporation. The conversion to Manager of the Bank according to this Act shall not be deemed dismissal by the previous organization, and it shall be deemed that the working period in the position of the General Manager of the Small Industry Finance Corporation is the period that the Manager works for the Bank.

Section 50 Officials and employees of the Small Industry Finance Corporation shall be official or employees of the Bank and receive salary, wage, remuneration, welfare and other benefits equal to which they normally receive. The Bank shall completely determine the position, salary, wage, remuneration, welfare and other benefits of such persons within one hundred and twenty days from the date that this Act comes into force.

Conversion to officials or employees of the Bank according to this Act shall not be deemed dismissal by the previous organization, and it shall be deemed that the working period of such officials or employees at the Small Industry Finance Corporation is the period that they work for the Bank.

Section 51 The provident fund of the Small Industry Finance Corporation that has been registered and established pursuant to Provident Fund Act, B.E. 2530 (1987) shall be continued whereby the Bank established under this Act is an employer.

Countersigned by

Police Lieutenant Colonel Thaksin Shinawatra

Prime Minister

Remark:- The reason for enactment of this Act is that small and medium enterprises are very essential to the country's strong and sustainable economic development which will create jobs, generate income and support the production base. It is deemed reasonable to establish Small and Enterprise Development Bank of Thailand to systematically support, promote and develop many small and medium enterprises in Thailand by providing financial, technical, marketing and management services. This Act is hereby enacted.