

Laws to Take Effect

The National Legislative Assembly have recently passed the draft Amendments to the Provident Fund Act B.E. 2530 (1987) and the draft Trust for Transactions in Capital Market Act, which were proposed by the SEC through the Ministry of Finance. To become effective, both laws shall be presented to His Majesty the King for signature and then published in the Government Gazette.

- **Amendments to Provident Fund Act**

The Amendments to the Provident Fund Act B.E. 2530 (1987) shall grant greater benefits to fund members in the areas of facilitating the mobility of labor, supporting employees' choices and promoting long-term savings through provident funds, as summarized below:

1. To allow resigned fund members to maintain his or her accrued benefits in the fund for a period stated in the fund article while these accrued benefits shall share interest incurred during such period;
2. To accept the transfer of retirement savings of government officials under the Government Pension Fund to a provident fund in cases where the new employer is a private or state enterprise;
3. To give provident fund members choices to receive accrued benefits either as a lump sum payment or an installment payment after retirement;
4. To enhance operational efficiency by allowing funds to be run by multi-investment policy, known as "master fund," which supports the "employee's choice" scheme; and
5. To provide an appropriate vesting standard that is fair for the funds' members.

Upon the promulgation of the amended Act, the SEC organized a meeting with asset management companies, the Association of Investment Management Companies and the Association of Provident Fund in early September to clarify concepts of the Amendments and address common issues for the purpose of reviewing existing rules and regulations.

- **Trust for Transactions in Capital Market Act**

The Trust Act will provide means to support (1) the issuance of securities under the Securities and Exchange Act B.E. 2535 (1992), (2) the securitization under the Royal Enactment on Special Purpose Juristic Persons for Securitization, and (3) other transactions beneficial to capital market development. Trust will help to reduce default and bankruptcy risks of both securities issuers and other participants, and will be an alternative vehicle for facilitating transactions in the capital market. Key details of the Trust Act are summarized accordingly:

- **Characteristics of Trust**

A trust is a legal binding, *not* a legal person, of three parties - a settlor, a trustee, and a beneficiary. The settlor trustfully transfers or creates real rights or any other rights to the trustee in order for the trustee to be legally entitled to those rights and have power to manage them for the beneficiary's benefit. After trust formation, the settlor shall have no more rights or duties unless stated otherwise in the trust contract. The beneficiary then has legal rights to claim interests from the trust while the trustee shall manage the trust for the benefit of the beneficiary and be directly responsible to the beneficiary. In cases where the trustee resigns or becomes insolvent, dissolved or removed, the creation of trust shall not be affected, but the trustee shall be altered.

- **Key Principles Arising from Fiduciary**

The above fiduciary relationship focuses on three key rules:

1. *Bankruptcy Remoteness* - trust property legally owned by a trustee shall not be enforced for payment to creditors of trustee even though the trustee becomes bankrupt;

2. *Fiduciary Duties* - a trustee shall manage trust with skills, loyalty and reasonable care for the best interest of the beneficiary, and shall not put itself in a position where there may be conflict of interests unless it is remuneration or a fair transaction being sufficiently disclosed to the beneficiary in advance and no objection from the beneficiary. In addition, the trustee shall not delegate trust management except when it has the rightful power under trust contract to do so. Besides, the trustee shall segregate trust property from its own assets and prepare an account of each trust separately as well as keep all trusts' accounts apart from other accounts under trustee.
3. *Beneficiary Protection* - tracing and recovery are tools for protecting the beneficiary's interest. In case of tracing, a beneficiary has the power to trace trust property from a third party who receives such property with bad faith or knowing or having reasonable grounds to know that it is a breach of trust or without consideration. In case of recovery, the beneficiary has the right to claim compensation for benefit of trust from a trustee who fails to manage trust property in accordance with the trust contract or the Act.

- **Supervision of Trust Business**

Commercial banks, financial institutions created by other specific laws and legal entities as specified by the SEC may apply for an approval to undertake trust business. In granting an approval, the SEC shall consider the applicants' fit and proper qualities in relation to their financial condition, operating system and other qualifications as stipulated by the SEC.

The SEC will hold public seminars for better understanding and preparation of relevant parties in due course.