

(Unofficial translation)

PROVIDENT FUND ACT B.E. 2530 *

BHUMIBOL ADULYADEJ, REX.,

Given on the 30th day of November B.E. 2530;
Being the 42nd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is deemed expedient to enact the law governing provident funds;

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

Section 1. This Act shall be called “the Provident Fund Act B.E. 2530”.

Section 2.^{**} This Act shall come into force on and from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:

“fund”³ means a provident fund.

“single fund”³ means a fund established for employees of a single employer.

“pooled fund”³ means a fund established for employees of multiple employers.

“wages” means the money paid by the employer to the employee as remuneration for working, whether determined, calculated or paid as the remuneration by any methods, and called by any name, but excluding the overtime payment, the payment for work on holidays, and money or other benefits withheld or additionally paid by the employer to the employee for the benefit of working.

* The English translation of this Act was originally undertaken by Chandler and Thong-ek Law Offices Limited. The staff of the Office of the Securities and Exchange Commission (SEC) has edited and revised the original translation, translated the Amendments to the Act and compiled them into this translation. Readers should be aware that only the original Thai text has legal force and that the English translation is strictly for reference. Please also note that the translation has not been subjected to an official review by the SEC Office, who can neither undertake any responsibility for its accuracy nor be held liable for any loss or damages arising from or related to its use.

** Published in the Government Gazette, Volume 104 (Special Issue), Part 254, dated 7th December B.E. 2530, and became effective on 8th December B.E. 2530.

³ indicated amendment by the Provident Fund Act (No.3), B.E.2550

“employer” means a person who agrees to recruit the employee to work by paying wages, notwithstanding whether it is a natural person or juristic person, and whether or not such agreement is made under a written contract.

“employee” means a person who agrees to work for the employer and receives wages, notwithstanding whether or not there is a written contract.

“registrar”² means a person appointed by the Minister to be the Registrar of provident funds.

“competent official” means a person appointed by the Minister to execute the duties in accordance with this Act.

“Minister” means the Minister in charge of the implementation of this Act.

Section 4. The Minister of Finance shall be in charge of the implementation of this Act, and shall be empowered to appoint the registrar and the competent official, issue ministerial regulations, and prescribe other tasks to implement this Act.

Ministerial regulations shall be enforceable upon their publication in the Government Gazette.

Chapter 1

Establishment

Section 5.³ A fund shall come into existence only when it is established by agreement of the employees and the employer and registered under this Act, to serve as a security for the employees in case of their death, termination of employment, or resignation from the fund, by payments of the employees’ savings and the employer’s contribution in accordance with the rules prescribed in the fund’s articles. A fund may be established as a single fund or a pooled fund which may have one or multiple investment policies.

Section 6. Upon agreement of the employees and the employer to establish the fund pursuant to Section 5, an application for registration shall be submitted to the registrar according to the rules and procedures prescribed by ministerial regulations.

If a provident fund which has been set up before the effective date of this Act is intended to be a fund under this Act, it shall proceed in accordance with the first paragraph.

Section 7. A fund which has been registered shall become a juristic person.

² indicated amendment by the Provident Fund Act (No.2), B.E.2542

Section 7/1.³ A fund shall consist of the following assets:

- (1) savings and contribution;
- (2) provident funds pursuant to the second paragraph of Section 6;
- (3) surcharges pursuant to the third paragraph of Section 10;
- (4) donated assets;
- (5) assets derived from investments or interests incurred from assets of the fund;
- (6) the whole amount of the employee's assets transferred from his previous fund or from the Government Pension Fund, provided that the transfer of such assets to the fund shall be in accordance with the rules and procedures prescribed by the registrar's notifications;
- (7) other assets as prescribed by the registrar's notifications.

Section 8. In connection with the application for registration of a fund, if the requirements of Section 6 have been properly and fully complied with, and the fund's articles are properly in accordance with Section 9 and are not in violation of law or the fund's objectives, the registrar shall effect the registration of the fund, and shall issue a certificate of registration to the fund.

The registrar shall notify the registration of the fund in the Government Gazette.

Section 9. The articles of the fund shall consist of at least the following particulars:

- (1) the name of the fund, which shall be preceded by the words, "Provident Fund" and followed by the words, "Which Has Been Registered";
- (2) the location of the office;
- (3) the objectives;
- (4) the procedures for admission of members and termination of memberships;
- (5) the provisions regarding the number of the committee members, the procedures for election and appointment, the term of office, the termination of office, and the meetings of the fund committee;
- (6) the provisions regarding the employees' savings and the employer's contribution payable to the fund;
- (7) the provisions regarding the rules and procedures for the computation of benefits entitled to the employees;

- (8)³ the provisions regarding the rules, procedures and period of time thereby the payment upon termination of employee's membership or dissolution of the fund pursuant to Section 25 shall be prescribed, without unreasonable grounds for eliminating the employee's rights;
- (9) the provisions regarding the expenses for the fund's operation;
- (10)³ the provisions regarding the general meeting or member meetings classified by investment policies or employers in cases where the fund is established with multiple investment policies or as a pooled fund, as the case may be;
- (11) other particulars as prescribed by ministerial regulations.

The fund committee shall register amendments to the fund's articles within fifteen days after the date when the resolution of such amendments is passed and the amendments shall not come into force until the registrar has effected the registration thereof.

Section 10.⁴ At each payment of wages, the employee shall pay his savings into the fund through the employer's deduction from wages, and the employer shall pay the contribution into the fund at the rate prescribed in the fund's article, provided that the rate so prescribed shall not be less than two per cent but not more than fifteen per cent of the wages.

The employees and the employer may agree to pay the savings and contribution into the fund at the rate higher than that specified in the first paragraph upon approval of the Minister.

The employer shall remit the amounts mentioned in the first paragraph into the fund within three business days from the date of payment of wages. If the employer remits the savings or the contribution into the fund later than three business days, the employer shall pay a surcharge into the fund during the period of delay at the rate of five percent per month of the amount of savings or contribution whose remittance is delayed.

Section 10/1.⁴ In cases of economic crisis, disaster or any other severe events widely affecting economic condition, the Minister may approve the employees or employers being unable to pay savings or contributions into the fund to seize or postpone such payments for the period not exceeding one year at a time, provided further that the Minister may extend the period or prescribe the condition as necessary and expedient.

⁴ indicated amendment by the Provident Fund Act (No. 4) B.E. 2558

Section 11. The fund shall have a fund committee which consists of representatives elected by the employees and those appointed by the employer. The fund committee shall have the duty to supervise the overall operation of the fund and shall have the power to appoint a fund manager and shall be the representative of the fund in the businesses involving third parties. For such purpose, the fund committee may delegate its power in writing for one or more committee members to act on its behalf.

The fund committee shall register the appointment of the fund manager or the change of the fund committee members within fourteen days after the date of such appointment or such change.

Chapter 2

Management of the Fund

Section 12.² The Minister shall have the powers and duties to supervise and control generally for the implementation of the provisions of this Act.

In order to implement the first paragraph, the Minister may entrust any governmental agency under his supervision to carry out duties on his behalf and may authorize the entrusted agency to appoint its officials to be the competent officials for executing the duties under this Act.

Section 12 bis.² The registrar shall have the powers and duties to supervise the management of the fund and shall have the power to order the fund manager to give statement and provide reports on the management of the fund.

If the registrar considers that any fund manager manages the fund in a manner that may cause damage to the fund, the registrar shall have the power to order the fund manager to rectify or suspend such act or to order a removal of the fund manager.

Section 12 ter.² The Registrar shall prepare a report on the supervision of the management of the funds and submit the same to the Minister at least twice a year.

For the purpose of supervision and control to implement the provisions of this Act, the Minister may order the registrar to provide additional reports on the results of its performance or clarify facts in any matter.

Section 13.² The fund shall be managed by a person who is not the employer and is licensed to operate securities business in the category of private fund management under the law governing securities and exchange.

Section 14.² In managing the fund, the fund manager shall have the duties in accordance with, and be subject to, the provisions regarding the private fund management under the law governing securities and exchange.

Section 15. The employer shall absolutely segregate the accounts and documents regarding its financial matters or other assets from the accounts and documents regarding the fund's financial matters or other assets.

Section 16.⁴ In respect of investing or seeking benefits for the fund, the fund manager shall make use of the employee's savings and the employer's contribution in accordance with the investment policy assigned by the employee. In cases where no investment policy has been assigned by the employee, the previous investment policy shall apply. In cases where no previous investment policy, the investment policy specified in the fund's article shall apply. In cases where the fund's articles do not specify such investment policy, the investment policy associates with minimal risks shall apply.

Section 17.³ The fund manager shall prepare an account segregating all fund assets by recording incomes and expenses according to the types of funds, as follows:

- (1) in case of pooled fund, the incomes and expenses of the fund shall be recorded according to the employees' interest segregated by each employer, provided that the following incomes and expenses of the fund shall be calculated and recorded as incomes or expenses in the accounts of the employees of the same employer:
 - (a) surcharges paid into the fund by the employer;
 - (b) the employer's contribution and its interest which are not entitled upon the employees whose memberships have been terminated, and are determined by the fund's articles to be an asset of the fund;
 - (c) damages or interest paid by the fund as a result of court judgment or order;
 - (d) money devolved onto the fund pursuant to the fourth paragraph of Section 23;
 - (e) other incomes or expenses as prescribed by the registrar's notification;

⁴Incomes of the fund under (a), (b), (d) and (e) of the first paragraph may be specified in the fund's articles to be recorded in accordance with the employees' interest or recorded as the average by the number of employees of one or more employers.

- (2) In case of fund with multiple investment policies, the account shall be prepared to segregate the assets of each investment policy, provided that the incomes and expenses incurred from the management under a particular investment policy shall be recorded as incomes and expenses in the account of such investment policy while other incomes and expenses shall be distributed into every investment policy of the fund in proportion to each investment policy's net asset value, and shall be recorded as incomes and expenses in the account of each investment policy.

Section 18.² (Repealed)

Section 19.² (Repealed)

Section 20.² The fund manager shall cease to be so before expiry of contract upon:

- (1) removal by the registrar under the second paragraph of Section 12 bis;
- (2) lack of qualifications of the fund manager;
- (3) termination of contract by the fund or the fund manager; or
- (4) dissolution of the fund under Section 25.

Section 21.² In cases where the fund manager ceases to be so under Section 20 (1), (2) or (3), the fund committee shall appoint a new fund manager within thirty days from the date of cessation of office of the original fund manager, and shall notify the appointment of the new fund manager to the registrar within fourteen days from the date of such appointment.

Section 22. The employees and the employer may request an examination of the accounts and documents of the fund at the fund's office during business hours.

Chapter 3

Payments out of the Fund and Dissolution of the Fund

Section 23.⁴ Under Section 23/2, Section 23/3 and Section 23/4, when an employee's membership terminates on a cause other than the dissolution of the fund, the fund manager shall make payment out of the fund to the employee in accordance with the rules and procedures provided in the fund's articles and as prescribed by Section 23/1, and such payment shall be made in one lump sum within thirty days from the date of termination of membership.

In case of termination of membership because of death, if the employee did not, by a will or in writing delivered to the fund manager, designate a person who shall receive the payment out of the fund, or has designated the person but such person died before the payment is made, the payment shall be made out of the fund under the first paragraph to the persons pursuant to the following criteria:

- (1) the children by two portions, but where the deceased has three or more children, by three portions;
- (2) the husband or wife, by one portion;
- (3) the parents, or the living father or mother, by one portion.

If the deceased has none of the persons in (1), (2), or (3), or had but such person died before the payment is made, the portion of the payment otherwise entitled to such person shall be allocated to the persons who are alive in the proportion described in the second paragraph.

If the deceased has no person who shall be entitled to the payment out of the fund as provided in the second paragraph, or has no legal heir, such amount shall devolve onto the fund.

Section 23/1.³ In case of pooled fund, the fund manager shall calculate the benefit of an employee upon termination of his membership from the interest of all employees of the same employer.

In case of fund with multiple investment policies, the fund manager shall calculate the benefit of an employee upon termination of his membership from the assets in the account of the investment policy where such employee has interest.

Section 23/2.⁴ In cases where any employee's membership terminates due to his retirement as specified in the fund's article or his resignation at the age of no less than 55 years old, if such employee declares his intention to receive installment payments from the fund, the fund manager shall make such payments from the fund as intended by the employee who shall maintain his membership for the period of time specified by the fund's articles. The employee and his employer, however, shall not make further payments of savings or contribution respective to such employee. In this regard, receipt of payment from the fund shall be in accordance with the criteria specified by the registrar.

Section 23/3.³ In cases where any employee's membership terminates upon the end of his employment for whatever reasons, such employee shall be entitled to maintain the whole amount of the benefits he is entitled to receive within the fund as well as his membership. Such employee and his employer, however, shall not make further payments of savings or contribution respective to such employee during the period of time as specified in the fund's articles, provided that the period so specified in the fund's articles shall not be less than ninety days from the date on which his employment ends.

Section 23/4.⁴ In cases where the employer disengage from pooled fund and has not established the new fund or the employee's membership terminates due to termination of employment for whatever reasons or the fund has been dissolved, if the employee declares his intention to the fund manager or the liquidator to transfer all of the amount of benefits entitled to receive from the fund by such employee or the remaining amount in cases of installment payments under Section 23/2 or to transfer the amount of benefits maintained in the fund under Section 23/3 to the retirement mutual funds or any other fund with the objective to serve as a security for termination of employment or old age, the fund manager or the liquidator shall proceed with the employee's intention, providing that the registrar may prescribe the criteria and condition.

Section 24.³ The claim for payment out of the fund pursuant to Section 23, Section 23/2 and Section 23/3 shall be neither transferable nor subject to execution.

Section 25. The fund shall dissolve upon:

- (1) dissolution of the employer;

- (2) dissolution of the fund by the resolution of the general meeting;
- (3) occurrence of any event requiring a dissolution as prescribed by the fund's articles;
or
- (4)² dissolution of the fund by the order of the registrar under Section 27.

In cases where the fund consists of more than one employer, the dissolution or withdrawal from the fund by certain employers shall not constitute a cause for the dissolution of the fund, unless the fund's articles provide that the fund shall dissolve thereby.

On the occurrence of the event under the second paragraph, the fund committee shall notify the registrar thereof within seven days of the date of dissolution or withdrawal by any employer, and the liquidation of the portion of the fund attributable to such employer and its employees shall be conducted in accordance with the procedures provided in the fund's articles. Once the liquidation has been completed, the registrar shall be notified within seven days from the date of such completion.

Section 26.² In cases where the fund dissolves under Section 25 (1), (2) or (3), the fund committee shall notify the registrar within seven days from the date of dissolution, and the fund committee shall arrange for a liquidation within thirty days, and shall complete the liquidation within one hundred and fifty days from the date of dissolution, except in case of necessity where the registrar may allow extension thereof as seen fit.

Section 27.² The registrar shall, with the approval of the Minister, have the power to order a dissolution of the fund in any of the following events:

- (1) the operation of the fund is deemed to be in violation of the fund's objectives or any law;
- (2) the operation of the fund is deemed to be unable to continue for any reasons.

When the registrar has ordered a dissolution of the fund under the first paragraph, the fund shall be liquidated by a liquidator appointed by the registrar.

Section 28. When the fund dissolves pursuant to Section 25, the registrar shall announce the dissolution in the Government Gazette, and shall post the announcement at the fund's office or the registrar's office.

Section 29. The provisions of the Civil and Commercial Code on the liquidation of registered partnerships, limited partnerships, and limited companies shall apply *mutatis mutandis* to the liquidation of the fund.

During the liquidation process, if the liquidator deems it appropriate, he may make a partial payment to the employees, and after completion of the liquidation, all of the outstanding amounts shall be completely paid up to the employees within thirty days from the completion of the liquidation. If there is any remaining money, it shall be handled in accordance with the fund's articles.

The expenses and remunerations in connection with the liquidation shall be paid out of the assets of the fund.

Chapter 4

Competent Official

Section 30. For the purpose of examining the management of the fund, the registrar and the competent official shall have the following powers:

- (1) to enter the fund's office or the fund manager's office to examine the business, assets and liabilities of the fund during usual working hours;
- (2) to order the fund committee members, the fund manager or the fund's officers who are involved in the management of the fund to submit or present the accounts, documents or other evidence of the fund;
- (3) to summon the persons mentioned in (2) for enquiry or demonstration of facts relating to the management of the fund.

Section 31.² In carrying out his duties, the competent official shall present his identity card to the persons concerned.

The identity card of the competent official shall be in the form as prescribed by the registrar.

Chapter 5

Penalties

Section 32. Any fund which fails to use a name in the Thai language preceded by the words, "Provident Fund" and followed by the words, "Which Has Been Registered", or

uses a name in a foreign language but fails to use the words with corresponding meaning in its seals, nameplates, letters, notices, or other documents relating to its business, shall be subject to a fine not exceeding five thousand baht.

Section 33. Any person who uses a name in the Thai language preceded by the words, “Provident Fund” and followed by the words, “Which Has Been Registered”, or uses a name in a foreign language with corresponding meaning in its seals, nameplates, letters, notices, or other documents relating to its business while it is not a fund under this Act, shall be subject to a fine not exceeding five thousand baht, and additional fine not exceeding five hundred baht per day until it stops such use.

Section 34.² Any fund committee that fails to comply with the second paragraph of Section 11, Section 21, the third paragraph of Section 25, or Section 26, or appoints a person who is unqualified under Section 13 to be the fund manager, shall be subject to a fine not exceeding ten thousand baht.

Section 35.⁴ Any fund manager who fails to comply with the order of the registrar under Section 12bis, or fails to comply with Section 16, Section 17, Section 23, Section 23/1, Section 23/2 or Section 23/4 shall be subject to a fine not exceeding fifty thousand baht.

Section 36.² (Repealed)

Section 37. Any employer who fails to comply with Section 15 shall be subject to a fine not exceeding twenty thousand baht.

Section 38.² (Repealed)

Section 39.² (Repealed)

Section 40. Any person who fails to comply with the order of the registrar or the competent official, or obstructs or fails to facilitate the registrar or the competent official who discharges his duties pursuant to Section 30, shall be subject to a fine not exceeding five thousand baht.

Section 41.^{***} In case where any fund committee commits an offence under Section 34, if such offence of the fund committee is a result of an order or an action of any members, or in case such member has a duty to order or act but omits to order or act, which causes the fund committee commits an offence, such member shall be liable to the penalties as specified for such offences.

Section 42. A committee appointed by the Minister shall have the power to settle the offenses committed against this Act under Section 38 of the Penal Procedure Code.

The committee appointed by the Minister under the first paragraph shall consist of three persons, one of whom must be an inquiry official under the Penal Procedure Code.

When the committee has settled any case and the alleged offender has paid the fine as determined by the committee within the period of time specified by the committee, such case shall be regarded as settled.

^{***} indicated amendment by the Act Amending Provisions of Laws Relating to Criminal Liability of Representatives of Juristic Persons B.E. 2560

Section 43. Any offense under this Act shall be barred by prescription if it is not brought to the court or forwarded to the committee for settlement under Section 42 within one year from the date on which the registrar or the competent official found the commission of offense, or within five years from the date of commission of offense.

Countersigned by:
General P. Tinnasulanonda
Prime Minister