

BHUMIBOL ADULYADEJ, REX.

Given on the 31<sup>st</sup> Day of March B.E. 2535; being the 47<sup>th</sup> 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 private participation in State undertaking;

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

### **Section 1.**

This Act is called the "Private Participation in State Undertaking ACT, B.E. 2535"

### **Section 2.**

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

### **Section 3.**

All the other laws, by-laws, regulations, resolutions of the Council of Ministers and other orders, insofar as they deal with matters provided herein or are contrary hereto or inconsistent herewith, shall be replaced by this Act.

This Act shall apply to private participation in State undertaking, but not to the granting of concessions under the law on petroleum and the law on minerals

### **Section 4.**

The Prime Minister and 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 execution of this Act.

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

## **CHAPTER 1**

### **General Provisions**

### **Section 5.**

In this Act:

"Project agency" means a Government agency which is a Department or equivalent, State enterprise, State agency or local administration owning the project;

"State enterprise" means a State enterprise under the law on budgetary procedure;

"Local administration" means a local administration under the law on administrative organization of the State;

"Responsible Ministry of Government agencies" means a Ministry or Sub-Ministry having Government agencies under its control under the law on Organization of Ministries, Sub- Ministries, Departments:

"Responsible Ministry of State enterprises",

(1) in case of limited companies, means the Ministry of Finance, or a Ministry or Sub-Ministry authorized to exercise the rights of shareholders of such companies for and on behalf of the Ministry of Finance;

(2) in other cases, means a Ministry or Sub-Ministry, the Minister of which is the Minister having charge and control of the execution of the law establishing such State enterprise or is the Minister responsible for the supervision thereof

"Responsible Ministry of local administration" means the Ministry of Interior;

"State undertaking" means an undertaking in which anyone or more of the Government agencies, State enterprises, State agencies or local administration have the powers and duties to engage under the law, or an undertaking which requires the utilization of natural resources or assets of anyone or more of State agencies, State enterprises, State agencies or local administration;

"Project" means an investment in State undertaking, and the fund or assets thereof are one billion Baht or more or are in the amount increased as prescribed by the Royal Decree;

"Participate" means jointly invest with a private individual by any means whatsoever or entrust a private individual to invest solely by means of licensing or granting concession or granting rights in any manner whatsoever;

"Committee" means a Committee for selecting a private individual to participate in State undertaking under section 13.

## CHAPTER 2

### Submission of Project

#### Section 6.

The project agency which desires a private individual to participate in any project shall submit a detailed result of the studies and project analyses of the topics prescribed by the Office of the National Economic and Social Development Board to the Responsible Ministry.

#### Section 7.

If the project under Section 6 has the project fund or assets exceeding five billion Baht, the project agency must hire a consultant who must prepare a separate report with the particulars as prescribed by the Office of the National Economic and Social Development Board under section 6 and other essential matters which the consultant deems appropriate, and the project agency shall also submit the report of the consultant for the consideration under Section 8.

The consultant under paragraph one shall possess the qualifications as prescribed by the Minister of Finance and published in the Government Gazette.

#### Section 8.

The Responsible Ministry of the project agency shall consider and submit the result of the studies and project analyses to the Government agency as follows:

- (1) new projects shall be submitted to the Office of the National Economic and Social Development Board for consideration;
- (2) projects with existing assets shall be submitted to the Ministry of Finance for consideration.

#### Section 9.

The Office of the National Economic and Social Development Board or the Ministry of Finance shall proceed as follows:

- (1) in case of new project
  - (a) if the Office of the National Economic and Social Development Board agrees with

the project , the project shall be submitted to the Council of Ministers for approval in principle;

(b) if the Office of the National Economic and Social Development Board disagrees with the project , the project agency shall be notified accordingly.

In the case where the project agency disagrees with the opinion of the Office of the National Economic and Social Development Board under (b), the opinion or additional explanations of the project agency shall be submitted through the Responsible Minister to the Council of Ministers for decision by notifying all the particulars as prescribed by the Office of the National Economic and Social Development Board under Section 6 and other information as the project agency deems appropriate;

(2) in case of project with existing assets

(a) in the case where the Minister of Finance agrees with the project, the project shall be submitted to the Council of Ministers for approval in principle;

(b) in the case where the Minister of Finance disagrees with the project, the project agency shall be notified accordingly.

In the case where the project agency disagrees with the opinion of the Ministry of Finance under (b), the opinion or additional explanations of the project agency shall be submitted through the Responsible Minister to the Council of Ministers for decision by notifying all the particulars as prescribed by the Office of the National Economic and Social Development Board under section 6 and other information as the project agency deems appropriate.

The Office of the National Economic and Social Development Board and the Ministry of Finance shall finish the consideration of the project in accordance with this section within sixty days as from the date of its receipt. If such period expires, the Office of the National Economic and Social Development Board and the Ministry of Finance shall be deemed to agree with the project.

#### **Section 10.**

In the case where any Government agency, State enterprise, State agency or local administration is about to engage in State undertaking and the Council of Ministers passes a resolution for private participation, such agency shall proceed in accordance with the resolution of the Council of Ministers and comply with this Act.

#### **Section 11.**

If any project has the assets less than one billion Baht or less than the amount increased as prescribed by the Royal Decree, the Council of Ministers may require that its implementation shall proceed in accordance with this Act.

### **CHAPTER 3**

#### **Project Implementation**

#### **Section 12.**

After the Council of Ministers has already approved any project, the project agency shall draft the invitation for private participation and draft the project scope and essential terms and conditions to be included in the agreement for private participation.

### **Section 13.**

The project agency shall appoint a Committee consisting of representative of the Responsible Ministry who is a civil servant, State enterprise officer, State agency officer or local administration officer, as the case may be, as Chairman, representative of the Ministry of Finance, representative of the Office of the Attorney-General, representative of the Office of the National Economic and Social Development Board, representative of the Bureau of the Budget, a representative each of other two Ministries, and not more than three qualified persons as members, and a representative of the project agency shall be member and secretary.

### **Section 14.**

The Committee under Section 13 shall have the following powers and duties:

- (1) to give approval for a draft invitation for private participation, draft project scope and essential terms and conditions to be included in the agreement for private participation;
- (2) to determine the bid security and the performance security;
- (3) to select a private individual to participate;
- (4) to consider other matters related to the project as deems appropriate.

### **Section 15.**

An invitation for private participation, written proposals to participate, invitation method, selection method of the Committee which must be carried out by bidding, determination of bid security and performance security must at least contain the details as prescribed in the Ministerial Regulation.

### **Section 16.**

In the process of selection, if the Committee is of the opinion that it is not appropriate to adopt the bidding method of selection and the project agency approves, it shall be reported to the Office of the National Economic and Social Development Board and the Ministry of Finance. If both agencies agree therewith, it shall be submitted to the Council of Ministers for approval.

If the project agency disagrees with the opinion of the Committee under paragraph one, the project agency shall report its opinion to the Office of the National Economic and social Development Board and the Ministry of Finance for consideration, If both agencies agree therewith or anyone of them disagrees with each other, the bidding method of selection shall be adopted.

### **Section 17.**

In the case where the Council of Ministers gives approval for the project under Section 12 which has the fund or assets exceeding five billion Baht, the project agency must have the consultant, who possesses the qualifications in accordance with the Notification under Section 7, draft the project scope and prepare the opinion on the evaluation of the selection of private individual to participate under such project.

### **Section 18.**

In making an invitation for private participation at any time, if no one makes a bid to participate, such invitation shall be cancelled in order that a new invitation shall be made. If there is only one bid or there are several bids but only one of which satisfies the description in the written proposals for private participation under Section 15, the Committee shall proceed further; provided that, the Committee is of the opinion that it is beneficial to the State.

### **Section 19.**

At a meeting of the Committee, the presence of not less than three-fourth of the total number of members of the Committee is required to constitute a quorum.

The decision of the meeting on the selection of proposals and the bargaining negotiation shall be made by the votes of not less than two-thirds of the number of the members present.

Each member shall have one vote. In case of an equality of votes, the Chairman shall have an additional vote as a casting vote.

#### **Section 20.**

The Office of the Attorney-General shall examine the draft agreement for private participation before signing.

#### **Section 21.**

The Committee shall, within ninety days as from the date of its decision, submit the result of selection together with the justification, the issues negotiated and bargained on the interest of the State, draft agreement and all other documents through the Responsible Minister to the Council of Ministers for consideration.

If the Council of Ministers disagree therewith, the matters shall be returned to the Committee for revision, and the result of revision shall be submitted to the Council of Ministers for final decision.

### **CHAPTER 4**

#### **Supervision and Monitoring**

#### **Section 22.**

After the signing of the agreement, the project agency shall establish a coordinating committee consisting of representative of the project agency as Chairman, a representative of the Ministry of Finance, a representative of the Office of the National Economic and Social Development Board, a representative of any other agency which is not the project agency, a representative of the private individual who participates in the project, a representative of the Responsible Ministry and other representatives of not more than three persons whom the project agency deems appropriate to appoint, totaling not more than nine persons, as members.

The meeting of the coordinating committee under paragraph one and its quorum shall be as prescribed by the coordinating committee.

#### **Section 23.**

The coordinating committee under Section 22 shall have the following powers and duties:

- (1) to monitor and supervise the implementation as provided in the agreement;
- (2) to report the result of implementation, progress, problems and solutions to the Responsible Minister for information.

The period for reporting under (2) shall be as prescribed by the coordinating committee; provided that, it shall not exceed six months for each report.

#### **Section 24.**

In the case where it appears that the project agency neglects or fails to comply with the binding obligations of the agreement which has already been signed, the representative of the Ministry of Finance in the coordinating committee shall submit the report to the Minister of Finance for further submission to the Council of Ministers.

## CHAPTER 5

### Transitory Provisions

#### Section 25.

Any project for private participation, which has already been implemented in any step before this Act comes into force shall be valid, but its implementation in the next step comply with this Act.

**Countersigned by Mr. Anand Panyarachun as the Prime Minister**

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