

INVESTMENT PROMOTION ACT

B.E. 2520¹

Amended by

INVESTMENT PROMOTION ACT (NO. 2)

B.E. 2534²

Amended by

INVESTMENT PROMOTION ACT (NO. 3)

B.E. 2544³

Official Translation Authorized by The Board of Investment of Thailand (BOI)

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

Whereas it is expedient to revise the law on promotion of investment;

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

Section 1. This Act is called the “Investment Promotion Act, B.E. 2520”

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 The following are hereby repealed:

- (1) Announcement of the Revolutionary Party No. 31 dated 29th November, B.E. 2501; and
- (2) Announcement of the National Executive Council No. 227, dated 18th October, B.E. 2515.

¹ Published in the Government Gazette Volume 94, Part 38, Special Issue, dated May 4, B.E. 2520 (A.D. 1977)

² Published in the Government Gazette Volume 108, Part 201, Special Issue, dated November 21, B.E. 2534 (A.D. 1991)

³ Published in Government Gazette Volume 118, Part 110 Kor., Decree Issue, dated November 30, B.E. 2544 (A.D. 2001)

All other laws, rules, and regulations in so far as they deal with matters governed by this Act. Or are contrary to, or inconsistent with the provisions of this Act, shall be replaced by this Act.

Section 4. In this Act,

“Applicant” means one who applies for investment promotion under this Act;

“Promoted person” means one who is granted a promotion certificate under this Act;

“Machinery” means the machinery which is essential for the promoted activity and those which are essential for the construction of a factory, and includes component parts, equipment, tools, implements, and pre-fabricated factory structures to be assembled as a factory;

“Board” means the Board of Investment;

“Member” means a member of the Board of Investment, and includes the Chairman and the Vice Chairman of the Board of Investment;

“Advisor” means an advisor to the Board of Investment;

“Secretary General” means the Secretary General of the Board of Investment;

“Office” means the Office of the Board of Investment;

“Competent Office” means one who has been appointed by the Prime Minister for the execution of this Act.

Section 5. The Prime Minister shall have charge and control of the execution of this Act and shall have the power to appoint competent officials for the execution of this Act.

Chapter 1

Board, Advisors and Competent Officials

Section 6. There shall be a Board of Investment consisting of the Prime Minister as Chairman, the Minister of Industry as Vice Chairman, not more than ten other competent persons appointed by the Prime Minister to act as members, and the Secretary General as member and secretary to the Board, having the powers and duties under this Act.

The Prime Minister may appoint not more than five other competent persons to act as advisors.

Section 7. A member or advisor shall hold office for term of two years.

In the case where a member or an advisor is appointed, either as an addition or as a replacement, during the term of office of members or advisors already appointed, the person so appointed shall hold office only for the remaining term of his predecessor.

A member or advisor who vacates his Office may be reappointed.

Section 8. Apart from the expiration of term of office under section 7 paragraph one, a member or advisor vacates his office upon:

- (1) death,
- (2) resignation,
- (3) dismissal by the Prime Minister,
- (4) being adjudged bankrupt,
- (5) being adjudged incompetent or quasi-incompetent, or
- (6) being imprisoned by a final judgement to imprisonment, except for a petty offence or an offence committed by negligence.

Whenever a member or advisor vacates his office under paragraph one, the Prime Minister may appoint any other person to fill the vacancy.

Section 9. The Chairman of the Board shall convene a Board meeting.

In a meeting, the attendance of not less than one-half of total number of members of the Board shall be required to constitute a quorum.

The Chairman shall preside over the meeting. If the Chairman is absent from the meeting or is unable to attend, the Vice Chairman shall preside over the meeting. If the Vice Chairman is absent from the meeting or is unable to attend, the members present shall elect one of them to preside over the meeting.

A decision of the meeting shall be taken by a majority of votes.

Each member shall have one vote. In case of an equality of votes, the person who presides over the meeting shall cast another vote as a deciding-vote.

Section 10. In the case where the Chairman is unable to perform his duties, the Vice Chairman shall act on his behalf. If the Chairman and the Vice Chairman are unable to perform their duties, the Secretary General shall convene the meeting in order that a member may be elected to act on behalf of the Chairman.

Section 11. In the performance of duties under this Act, the Board may authorise the Office to act on its behalf, appoint subcommittees to perform any assigned duties, or summon any person concerned to give facts, explanations, advice or opinions.

The provisions of section 9 shall apply mutatis mutandis the meetings of the sub-committees.

Upon completion of the assigned duties under paragraph one, the Office or the sub-committees, as the case may be, shall report to the Board.

Section 12. Members, advisors and members of sub-committees shall be entitled to receive such remuneration as may be prescribed by the Council of Ministers.

Section 13. The Office shall be administered by the Secretary General who shall be responsible for the administration of the office and directly under the Prime Minister. There shall be Deputy Secretary General (s) and there may also be an Assistant Secretary General to assist the Secretary General in carrying out his duties.

The Secretary General, Deputy Secretary General (s) and Assistant Secretary General shall be ordinary civil servants.

The Office shall have the following powers and duties:

- (1) to perform such functions as may be resolved or assigned to it by the Board;
- (2) to undertake works to publicise investment potentials and induce investments in those activities which are important and beneficial to economic and social development, and security of the country;
- (3) to establish an Investment Services Centre to assist prospective investors and investors in obtaining permissions and services related to investment which include facilities and assistance to prospective investors in the implementation of investment projects;

- (4) to appraise projects requesting promotion, supervise, control, and evaluate promoted investment projects;
- (5) to conduct studies and research in identifying investment opportunities, prepare feasibility reports, and formulate an investment promotion programme;
- (6) to study and compile data relating to investment on the Kingdom;
- (7) to perform other duties in the furtherance of the objectives of this Act.

Section 14. A competent official shall have the power to enter the premises of the applicant and of the promoted person during working hours for inquiry of fact from any person on such premises or examination of any document or thing relating to the activity in which the promotion is being sought or has been granted, as may be necessary.

In the case where the competent official intends to enter the premises, referred to in paragraph one, the applicant or the promoted person shall, except in case of urgency, be notified in writing at a reasonable time in advance.

Chapter 2

Applying for and Granting of Promotion

Section 16. The activities which are eligible for investment promotion by the Board are those which are important and beneficial to the economic and social development, and security of the country, activities which involve production for export, activities which have high content of capital, labour or service or activities which utilise agricultural produce or natural resources as raw materials, provided that in the opinion of the Board, they are non-existent in the Kingdom, or existent but inadequate, or use out-of-date production processes.

The Board shall make an announcement designating the types and sizes of investment activity eligible for promotion and may stipulate there in the conditions under which promotion is to be granted and may amend or abolish those conditions at any time.

In the case where the Board is of the opinion that any activity announced to be eligible for promotion under paragraph two no longer requires to be promoted, it may announce a temporary or permanent cancellation of promotion for that activity.

Section 17. A person who seeks to be a promoted person shall file to the Office and application for promotion in accordance with the rules, procedure and forms prescribed by the Secretary General, describing the investment project for which promotion is sought.

The promoted person shall be a company, a foundation or a cooperative established in accordance with the respective law.

Application for promotion prior to the formation of a company, a foundation, or a cooperative under paragraph two shall be made in accordance with the rules, procedure and forms prescribed by the Secretary General.

Section 18. The investment project to which the Board may grant promotion shall be one which is economically and technologically sound.

Consideration will be given to:

- (1) the existing number of producers and production capacity in the Kingdom and the size of production capacity to be created under promotion compared with demand estimates;
- (2) the prospect for which such activity will expand the market for the products or commodities produced or assembled in the Kingdom and will encourage the production or assembly in the Kingdom;
- (3) the quantity and proportion of the resources available in the Kingdom including the capital. Raw or essential materials and labour or other services utilised;
- (4) the amount of foreign currency which may be saved or earned for the Kingdom;
- (5) the suitability of the production or assembly processes;
- (6) other requirements which the Board deems necessary and appropriate.

Section 19. The investment project to which the Board may grant promotion shall be one which incorporates appropriate measures for the prevention and control of harmful effects to the quality of the environment in the interest of the common good of the general living of the public and for the perpetuation of mankind and nature.

Section 20. In the case where the Board deems it appropriate to grant promotion to any applicant, the Board may stipulate conditions in the promotion certificate for the compliance by the promoted person in one or more areas as follows:

- (1) amount and source of capital;
- (2) nationality and number of shareholders;
- (3) size of activity including the types of products, commodities or services and the production or assembly processes, and capacity thereof;
- (4) amount of local raw materials to be used;
- (5) nationality and number of workers, technicians and experts;
- (6) training and employment of manpower;
- (7) prevention and control of damaging elements to the quality of the environment;
- (8) period of time to commence the implementation of the promoted project;
- (9) period of time to place orders for the purchase of machinery;
- (10) period of time to import machinery into the Kingdom;
- (11) period of time re-export the imported machinery after the termination of their use;
- (12) extension of time limits under (8), (9), or (11);
- (13) date of commencement of operation;
- (14) report on implementation of the project and operation;
- (15) report on the performance of the training provided by the foreign technicians and experts to the Thai personnel;
- (16) requirements that the products or commodities produced, assembled or exported conform to the standards prescribed either by the Board or other government agencies;
- (17) distribution of products or commodities produced or assembled, or services rendered;
- (18) export of products or commodities produced or assembled;
- (19) requirements that the cash, bank guarantee, the Thai government securities or other securities deemed appropriate by the Board, be deposited with the Office for the purpose of guaranteeing the compliance with the conditions stipulated by the Board;
- (20) other matters relating to the provision of facilities to the competent official, granting, exercising or controlling of the rights and benefits under this Act.

Section 21. When the Board has resolved to grant promotion to an applicant, the Office shall notify him in writing of the resolution of the Board together with the conditions stipulated by the Board within fifteen days from the date of the resolution.

If the applicant accepts the promotion under paragraph one, he shall confirm in writing to the Office within one month from the date of receiving the notice.

In the case where there are suitable grounds, the Secretary General shall have the power to extend the period of time under paragraph two for not more than three times and not longer than one month for each time.

Section 22. The applicant who has confirmed the acceptance of promotion under section 21 shall report to the Office the commencement of the project under promotion in accordance with the form and procedure prescribed by the Secretary General within six months from the date of confirming the acceptance of promotion.

In the case where there are suitable grounds, the Secretary General shall have the power to extend the period of time referred to in paragraph one not more than three times and not more than four months each time, and shall report to the Board every time the extension is granted by him.

When the Secretary General is of the opinion that the applicant can proceed with the implementation of the promoted project, he shall issue a promotion certificate to the applicant without delay.

Section 23. The promotion certificate shall be in the form prescribed by the Board.

The Secretary General shall sign the promotion certificate.

Any amendment to the promotion certificate shall be made by a resolution of the Board. The Secretary General shall sign the amended promotion certificate which shall be delivered to the promoted person without delay.

Chapter 3

Rights and Benefits

Section 24. Subject to the law on immigration, only in so far as it is not otherwise provided herein, the Board shall have the power to grant permission to foreign nationals for entry into the Kingdom for the purpose of studying investment opportunities or performing any other act benefiting investment for such period of time to stay in the Kingdom as the Board may deem appropriate.

An application for permission shall be in accordance with the rules, procedure and forms prescribed by the Board. In granting permission, the Board may stipulate such conditions as deemed appropriate.

Section 25. Subject to the law on immigration, only in so far as it is not otherwise provided herein, a promoted person shall be grant permission to bring into the Kingdom foreign nationals who are

- (1) skilled workers,
- (2) experts,
- (3) spouses and dependents of persons in (1) and (2) in such numbers and for such periods of time as the Board may deem appropriate even in excess of such quotas or period of time permitted to stay in the Kingdom as prescribed by the law on immigration.

Section 26. Subject to the law on working of foreign nationals, only in so far as it is not otherwise provided herein, foreign nationals who are granted permission under section 24 and foreign nationals who are skilled workers or experts and who are permitted to stay in the Kingdom under section 25, shall be granted a work permit for a specific position approved by the Board for the period of permitted stay in the Kingdom.

Section 27. A promoted person shall be permitted to own land in order to carry on the promoted activity to such an extent as the Board deems appropriate, even in excess of the permissible limit under other laws.

In the case where the promoted person who is a foreign national under the Land Code dissolves his promoted activity or transfers it to another person, he shall dispose of the land he has been permitted to own within one year of the date of dissolution or transfer, or the Director General of the Land Department shall have the power to dispose of it under the Land Code.

⁴**Section 28.** The promoted person shall be granted exemption from payment of import duties on machinery as be approved by the Board, providing that such machinery comparable in quality is not being produced or assembled within the Kingdom in sufficient quantity to be acquired for use in such activity.

⁴ Amended by Amendment Act (No. 2) B.E. 2534 (A.D. 1991)

⁵**Section 29.** When the Board is of the opinion that in granting promotion to any activity or applicant, it would be inappropriate to grant benefits under section 28, the Board may grant a reduction of only one-half of the rate of import duties or not granting the exemption of import duties and/or business taxes on the machinery to such activity or applicant and the ones that follow.

⁶**Section 30.** In the case where there are suitable grounds, the Board may grant a promoted person a reduction of import duties not exceeding ninety percent of the normal rates imposed on raw or essential materials which are imported into the Kingdom for the purpose of producing, mixing, or assembling in the promoted activity, each time for a period not more than one year from the date prescribed by the Board, provided that such raw or essential materials comparable in quality are not being produced or originated within the Kingdom in sufficient quantity to be acquired for use in such activity.

The foregoing shall be in accordance with such kinds, quantities, periods of time, conditions and procedure as shall be prescribed by the Board.

⁷**Section 31.** A promoted person shall be granted exemption of juristic person income tax on the net profit derived from the promoted activity as prescribed by an announcement of the Board, of which the proportion to the investment capital excluding cost of land and working capital shall be taken into consideration by the Board, for a period of not more than eight years from the date income is first derived from such activity.

In the case where activities are of special importance and benefit to the country as prescribed by an announcement of the Board, a promoted person in such activities shall be granted exemption of juristic person income tax on the net profit derived from the promoted activity for a period as prescribed by the Board but not more than eight years from the date income is first derived from such activity.

The income on which the computation of the net profit derived from the activity referred to under either paragraph one or paragraph two is to be based shall include income from the sale of such by-products and semi-manufactured products as the Board may deem appropriate.

⁵ Amended by Amendment Act (No. 2) B.E. 2534 (A.D. 1991)

⁶ Amended by Amendment Act (No. 2) B.E. 2534 (A.D. 1991)

⁷ Amended by Amendment Act (No. 3) B.E. 2544 (A.D. 2001)

In the case where a loss has been incurred during the period of receiving exemption of juristic person income tax referred to under either paragraph one or paragraph two, the Board may grant permission to the promoted person to deduct such annual loss from the net profits accrued after the expiration of the period of exemption of juristic person income tax for a period of not more than five years from the expiry date of such period. The promoted person may choose to deduct such loss from the net profit of any one year or several years.

The computation of the investment capital referred to under paragraph one shall be in accordance with the rules and procedures prescribed by an announcement of the Board.

Section 32. In the case where the Board is of the opinion that, in granting promotion to any activity or applicant, it would be inappropriate to grant the exemption of juristic person income tax under section 31, the Board may grant promotion to such activity or applicant and the ones that follow without granting exemption of juristic person income tax.

Section 33. Fees for goodwill, copyright or other rights from the promoted person according to the contract approved by the Board shall, in accordance with the rules and procedure prescribed by the Board, be exempted from computation of taxable income for a period of five years from the date the promoted person first derives income from the promoted activity.

Section 34. Dividends derived from a promoted activity granted an exemption of juristic person income tax shall be exempted from computation of taxable income throughout the period the promoted person receives the exemption of juristic person income tax.

⁸**Section 35.** For the purpose of promoting investment in certain locations or zones, the Board may prescribe, by publication in the Government Gazette, such locations or zones as Investment Promotion Zones.

Apart from the rights and benefits referred to in other sections herein, the Board shall have the power to grant a promoted person operating the promoted activity in such locations or zones prescribed under paragraph one, one or more special rights and benefits as follows:

(1) A fifty per cent reduction of the normal rate of juristic person income tax on the net profit derived from the promoted activity for a period of not more than five years commencing from the expiry date referred to under either paragraph one or paragraph two of section 31, or from

⁸ Amended by Amendment Act (No. 3) B.E. 2544 (A.D. 2001)

the date income is first derived from the promoted activity in the case where the promoted person is not granted exemption of juristic person income tax;

(2) Permission to deduct for the purpose of assessing juristic person income tax an amount double the costs of transportation, electricity and water supply incurred by the promoted person in the operation of the promoted activity, subject to such conditions, procedures and periods of time as shall be prescribed by the Board;

(3) Permission to deduct from the net profit an amount not exceeding twenty-five per cent of the cost of installation or construction of facilities used in the promoted activity according to the rules prescribed by the Board, under which the promoted person may, in addition to normal depreciation, choose to make such deductions from the net profit of any one year or several years within ten years from the date income is first derived from the promoted activity.

⁹**Section 36.** For the purpose of promoting exports, the Board may grant the promoted person one or more of the special rights and benefits as follows:

- (1) exemption of import duties on the raw and essential materials imported for use specifically in producing, mixing, or assembling products or commodities for export;
- (2) exemption of import duties on items which the promoted person imports for re-export;
- (3) exemption of export duties on products or commodities which the promoted person produces or assembles;
- (4) permission to deduct from the assessable income for payment of juristic person income tax an amount equal to five percent of the increased income over the previous year, derived from the export of products or commodities produced or assembled by the promoted person, exclusive of overseas insurance and freight charges.

The foregoing shall be in accordance with such conditions, procedure and periods of time as shall be prescribed by the Board.

Section 37. A promoted person, or an investor in the promoted activity whose domicile is outside the Kingdom, shall be granted permission to take out or remit abroad money in foreign currency if it represents

- (1) an investment capital which the promoted person brought into the Kingdom and dividends

⁹ Amended by Amendment Act (No. 2) B.E. 2534 (A.D. 1991)

or other returns on such capital;

(2) a foreign loan under a contract approved by the Board which the promoted person brought in to invest in the promoted activity, including the interest thereon;

(3) a payment for a foreign obligation of the promoted person under a contract for the use of rights and services relating to the promoted activity, provided that such contract was approved by the Board.

During any period when there is an adverse balance of payments which requires the preservation of foreign currency at a reasonable level, the Bank of Thailand may temporarily restrict the remittance abroad of such money, but the restrictions shall not cause the remittance of foreign capital to be less than twenty percent annum, provided that such remittance is made two years after the capital has been brought in, and the dividends to be lower than fifteen percent per annum of the capital brought into the Kingdom.

Chapter 4

Machinery, Raw and Essential Materials

Section 38.¹⁰ The Board shall have the power to order the Department of Customs to release to the applicant who has confirmed the acceptance of promotion under section 21 or to the promoted person, as the case may be, all machinery, raw or essential materials ordered or imported into the Kingdom and entitled to exemption or reduction of import duties under this Act by treating a bank guarantee issued by a commercial bank in the Kingdom as a cash deposit against the payment of import duties and/or business taxes.

Section 39.¹¹ In the case where the promoted person is unable to comply with the conditions relating to the import of machinery, or to the exemption or reduction of import duties on machinery prescribed in the promotion certificate and the Board is of the opinion that there are suitable grounds to amend the conditions, the Board shall have the power to make amendments thereto, if such machinery has been imported under the due process of law on

¹⁰ Published in the Government Gazette Volume 94, Part 38, Special Issue, dated May 4, B.E. 2520 (A.D. 1977)

¹¹ Published in the Government Gazette Volume 108, Part 201, Special Issue, dated November 21, B.E. 2534 (A.D. 1991)

customs, the Board may make the amendments retroactive to the date of its import, regardless of whether the import is made before or after the date of enforcement of this Act.

¹²**Section 40.** Within the period prescribed by the Board, which shall not be less than five and not more than fifteen years, the promoted person is prohibited to:

(1) use the machinery on which he has been granted the exemption or reduction of import duties is granted for any purpose other than that of the promoted activities of the promoted person, or to allow any person to use such machinery;

(2) move the factory or place of operation to any locality other than that prescribed in the promotion certificate.

Such prohibition shall not apply to the case where permission is granted by the Board under section 41.

Section 41. The Board shall have the power to permit a promoted person to mortgage, sell, transfer, lease, use for other purposes, or to allow other persons to use the machinery on which the exemption or reduction of taxes or duties is granted under section 28 or section 29, or to move the factory or place of operation to other locality.

The permission may be made in writing or by amending the promotion certificate; and the conditions and details of such permission may be stipulated therein.

The law on customs tariff shall not apply to the promoted person receiving permission from the Board under the Act unless the Board shall otherwise specify. In such a case, the law on customs tariff shall apply only in so far as it is not contrary thereto or inconsistent therewith.

Section 42. In the case where a promoted person has mortgaged machinery on which the exemption or reduction of taxes and duties is granted and the mortgagee who is not a promoted person forecloses the mortgage before the expiration of the period prescribed by the Board under section 40, the law on customs tariff shall apply to the mortgagee as if he were the importer who ceases to be entitled to exemption or reduction of taxes and duties on the machinery from the date of transfer.

¹² Added by Amendment Act (No. 3) B.E. 2544 (A.D. 2001), not apply to the income of a promoted person whose financial year ended before December 1, 2002 (The date of this Act came into force.)

Chapter 5

Guarantees and Protection

Section 43. The State shall not nationalize the activity of the promoted person.

Section 44. The State shall not undertake a new activity in competition with the promoted person.

Section 45. The State shall not monopolize the sale of products or commodities of the same kind as, or similar to those produced or assembled by the promoted person.

Section 46. The State shall not impose the price control on the products or commodities of the promoted activity except when it is necessary for the economic and social development and for the security of the country but in no case shall the controlled prices be lower than those which the Board deems appropriate.

Section 47. The promoted person shall be granted permission to export products or commodities of the promoted activity at all times except when it is necessary for the economic and social development and for the security of the country.

Section 48. The State shall not allow any government agency, government organisation or state enterprise to import into the Kingdom, with import duties exempted any kind as those being produced or assembled by the promoted person, which are comparable in quality therewith and are available in sufficient quantity to be acquire for its use.

The provision of paragraph one shall not apply to munitions under the law on control of military munitions for use in the service of the Ministry of Defence

Section 49. In the case where it is necessary to protect the activity of the promoted person the Board shall have the power to impose special fees for the import into the Kingdom of products or commodities of the same kind as, similar to, or substitutable with those produced or assembled by the promoted person at the rates the Board considers appropriate but not exceeding fifty percent of the prices of such imported products or commodities, inclusive of overseas insurance and freight charges.

The imposition of special fees under paragraph one shall be announced in the Government Gazette and shall be effective each period not more than one year from the day following the date its publication in the Government Gazette.

The Board shall have the power to make by publishing in the Government Gazette an amending or cancellation of the announcement made under this section at any time it deems appropriate.

In the case where there is a question whether or not the product or commodities imported into the Kingdom are subject to the special fees in accordance with the announcement of the Board, the Board shall have the power to decide it and the decision of the Board shall be final.

The collection of special fees for the import under this section shall be the power and duty of the Customs Department and law on customs shall apply mutatis mutandis as if the special fees for the import were the import duties under the law on customs tariff.

In the case where the Board decides that such products or commodities are not subject to the special fees and person has paid the special fees therefore, the Department of Customs shall refund the fees to such person.

Section 50. In the case where the Board is of the opinion that the imposition of special fees under section 49 is inadequate for the protection of the activity of the promoted person, the Ministry of Commerce shall ban the import into the Kingdom of products or commodities of the same kind as, similar to, or substitutable with those produced or assembled by the promoted person in accordance with the law on the control of export and import into the Kingdom of certain goods.

Section 51. In the case where the promoted person encounters any problem or obstacle in the course of carrying out the promoted activity and lodges his complaints to secure the assistance of the Board, the Chairman shall have the power to render any appropriate assistance or to order the related government agencies, government organisations, or state enterprises to proceed with the assistance without delay.

Section 52. In the case where the structure, rates, or procedure for the collection, of taxes and duties, service charges or fees are found to be an obstacle to the promotable or promoted

investments, irrespective of whether a complaint has been lodged with the Board, the Chairman shall have the power to order the related government agencies, government organisations, or state enterprises to take remedial action.

Section 53. Any government agency, government organisation or state enterprise to which the order of the Chairman has been issued under section 51 or section 52 shall render assistance or take remedial action in accordance with the aforesaid order. If the order cannot be implemented, it shall report to the Chairman with reasons within fifteen days from the date the order was received.

Upon having received the report of reasons under paragraph one, the Chairman may take any appropriate action which shall be final and the government agency, government organisation or state enterprise concerned shall comply therewith without delay.

Chapter 6

Withdrawal of Rights and Benefits

Section 54. In the case where a promoted person violates or fails to comply with the conditions stipulated by the Board, the Board shall have the power to withdraw the rights and benefits granted to him, in toto or in part, and may prescribe the duration thereof.

If the Board is of the opinion that such violation or failure to comply with the conditions by the promoted person is unintentional, the Board may first instruct the Office to serve a written warning to the promoted person to make remedy or to comply with the conditions with a prescribed period. If, after the expiration of such period, the promoted person has failed to do accordingly without justification, the Board shall take action as prescribed in paragraph one.

Section 55. In the case where the Board has withdrawn in toto the rights and benefits concerning taxes and duties on imports or exports, it shall be treated as if the promoted person had never been granted exemption or reduction of taxes and duties from the beginning and he shall pay taxes and duties computed on the basis of the condition and price of the items and the rate of taxes and duties thereof, as existed on the date of import or export. As for reduction of taxes and duties was granted, the outstanding balance of the full amount of taxes and duties as computed above shall be paid.

In the case where the Board has withdrawn in part the rights and benefits concerning taxes and duties on imports or exports, it shall be treated as if the promoted person had been granted exemption or reduction of taxes and duties from the beginning only to the extent of the rights and benefits still remaining to him and he shall pay taxes and duties only on the part which has been withdrawn computed on the basis of the condition and price of the items and the rate of taxes and duties as existed on the date of import and export.

The promoted person shall apply to the Customs Department or customs station through which the import or export of such items was effected within one month from the date of being informed of the order of the Board withdrawing such rights and benefits concerning taxes and duties to pay taxes and duties or additional taxes and duties, and the promoted person shall pay them at the customs office designated by the Customs Department within one month or from the date the promoted person was informed of the amount payable. If the promoted person fails to apply for paying taxes or does not pay such taxes and duties or additional taxes and duties within the time referred herein, the promoted person shall pay a surcharge at the rate, not on a compound basis, of one per cent per month of the amount thereof, payable from the expiry of either the application date or the payment date until the date that such taxes and duties or additional duties as well as surcharges have been paid, provided that it shall not exceed 3 months from such expiry dates.¹³

If the promoted person fails to comply so, it shall be treated as if the import or export of such items was effected by means of evasion of taxes and duties and the law on customs shall apply thereto. For the purpose of calculation of such surcharges, a fraction of one month shall be counted as one month.

In the case where the promoted person fails to comply with the warning of the Office under section 54, paragraph two, the Board may require the promoted person to pay a surcharge to the Government through the Customs Department, together with the taxes and duties or additional taxes and duties payable under paragraph three, at the rate of one percent per month of the amount thereof, payable from the expiry date of the period prescribed under section 54 paragraph two; provided that the amount of surcharge under this section shall not exceed the amount of taxes and duties or additional taxes and duties payable; and in order to

¹³ Paragraph three of Section 55 repealed and replaced by Amendment Act (No. 3) B.E. 2544 (A.D. 2001)

enforce the payment of surcharge, it shall be regarded as if it were duty payable under the law on customs.

For the purpose of legal proceeding, the computation of the prescription under this section shall commence one month after the order being informed.

Section 55/1.¹⁴ In the case where the Board has withdrawn the rights and benefits concerning juristic person income tax, it shall be treated as if the promoted person had not been entitled to the rights on the exemption or reduction of juristic person income tax for the financial year that such rights and benefits have been withdrawn, and the Revenue Code shall apply thereto.

The Board may withdraw the rights and benefits concerning juristic person income tax and make the withdrawal retroactive to the financial year that the promoted person violated or failed to comply with the conditions stipulated by the Board. The promoted person shall apply to the Revenue Department or Regional Revenue Office or Provincial Revenue Office in which the promoted person's head office is located for paying taxes and pay the taxes and duties that had been exempted or reduced within one month from the date the promoted person was informed of the withdrawal of such rights and benefits. The juristic person income tax rate that is applicable for the financial year that the promoted person is granted tax exemption or reduction shall apply for tax computation. If the promoted person fails to apply to and fails to pay taxes and duties or additional taxes and duties within the time thereof, the promoted person shall pay a surcharge under the Revenue Code from the expiry of the application date and not make the payment until such taxes and duties or additional taxes and duties as well as the surcharge have been paid. If the promoted person fails to comply so, the Revenue Code shall apply thereto.

The order of the Board withdrawing the rights and benefits concerning juristic person income tax under paragraph two shall not apply to dividends derived from the promoted activity which have been paid prior to the date of such withdrawal order.

Section 56. In the case where the promoted person dissolves his activity, merges it with others, or transfers it to others, the promotion certificate shall be valid for a period not more than three months from the date of dissolution, merger or transfer.

¹⁴ Added by Amendment Act (No. 3) B.E. 2544 (A.D. 2001), not apply to the income of a promoted person whose financial year ended before December 1, 2002 (The date of this Act came into force.)

In the case where the operator of the newly merged or transferred activity wished to take the transfer of the promoted activity under the conditions stipulated in the promotion certificate, he shall file an application for promotion within the period prescribed in paragraph one.

If the Board deems it appropriate to grant promotion thereto, a promotion certificate shall be issued granting him such rights and benefits under this Act in so far as they would remain to the original promoted person. If the Board deems it inappropriate to grant promotion, it shall withdraw all rights and benefits.

Chapter 7

Final Provisions

Section 57. All powers and duties vested in the Board of Investment under the Announcement of the National Executive Council No. 227 dated October 18, B.E. 2515, concerning the execution of the Announcement of the National Executive Council No. 328, dated December 13, B.E. 2515 shall be the power and duties of the Board under this Act.

Section 58. It shall be considered that a person who has received the promotion certificate to undertake an industrial activity according to the category, size and conditions as stipulated by Ministerial Regulations or announcements of the Board of Industrial Investment under the law on promotion of industrial investment and a person who has received the promotion certificate under the announcement of the National Executive Council No. 227 dated October 18, B.E. 2515 prior to the date this Act comes into force, shall be the promoted person under this Act and shall continue to enjoy such right and benefits under the conditions stipulated in the promotion certificate and shall also have the right to apply for the rights and benefits under this Act.

Section 59. Applications for promotion which have been approved for promotion by the Board under the Announcement of the National Executive Council No. 227 dated October 18, B.E. 2515 shall be considered as having been approved for promotion by the Board under this Act.

Section 60. Applications for promotion which are pending consideration on the date this Act comes into force shall be considered as having been filed under this Act.

Countersigned by
Thanin Kraivixien
Prime Minister

(Source: BOI : The Board of Investment of Thailand)

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