

TRUST FOR TRANSACTIONS IN THE CAPITAL MARKET ACT  
B.E. 2550 (2007)

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BHUMIBOL ADULYADEJ, REX.

Given on the 30<sup>th</sup> Day of December B.E. 2550;

Being the 62<sup>nd</sup> Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:  
Whereas it is expedient to have a law on trust for transactions in the capital market;

This Act contains certain provisions in relation to the restriction of rights and liberties of a person, in respect of which section 29 in conjunction with section 32, section 33, section 41 and section 43 of the Constitution of the Kingdom of Thailand so permit by the virtue of law;

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 “Trust for Transactions in the Capital Market Act B.E. 2550 (2007)”.

**Section 2.** This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette, except for section 3, section 4, section 5, section 6, section 7, section 8, section 9, section 54, section 55, section 56, section 57, section 77 and section 78 which shall come into force from the day following the date of their publication in the Government Gazette.<sup>1</sup>

**Section 3.** In this Act:

“trust” means a legal relationship arising from a trust agreement.

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\*Translated by Mr. Tanongsak Mahakusol, and reviewed by Mrs. Vilawan Mangklatanukul under contract for the Office of the Council of State of Thailand's Law for ASEAN project. –Initial Version– pending review and approval by the Office of the Council of State.

<sup>1</sup>Published in the Government Gazette, Vol. 125, Part 9 a, dated 14<sup>th</sup> January, B.E. 2551 (2008).

“trust agreement” means a contract whereby a person, called a settlor, transfers or creates property right or any right pertaining to property to another person, called a trustee, entrusting the trustee with a fiduciary duty to administer such property for the benefit of a third person, called a beneficiary. This shall include a written declaration which demonstrates a settlor’s intention to create a trust whereby the settlor and the trustee are the same person.

“trust property” means any property as specified in a trust agreement. This shall include all properties, fruits, debts and liabilities arising from the administration in accordance with the trust agreement or this Act.

“SEC” means the Securities and Exchange Commission under the law on securities and exchange.

“SEC Office” means the Office of the Securities and Exchange Commission under the law on securities and exchange.

“competent official” means a person appointed by the Minister for the execution of this Act.

“Minister” means the Minister in charge and control of the execution of this Act.

**Section 4.** A trust may be created for the benefit of conducting the following transactions in the capital market as prescribed by the SEC:

- (1) an issuance of securities under the law on securities and exchange;
- (2) a securitisation under the law on special purpose vehicles for securitisation;
- (3) other transactions which supports or benefits the capital market.

**Section 5.** The SEC and the SEC Office shall notify the general public with regard to the time period for consideration and ordering of permission and approval under this Act.

**Section 6,** All rules, regulations, notifications, orders or requirements issued under this Act by the SEC or the SEC Office which are applicable to the general public shall come into force upon their publication in the Government Gazette.

**Section 7.** The Minister of Finance shall have charge and control of the execution of this Act and shall have the power to issue notifications and appoint competent officials for the execution of this Act.

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

## CHAPTER I

### Supervision of Trust for Transactions in Capital Market

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**Section 8.** The SEC shall have the powers and duties to develop policy with regard to the promotion, development and the supervision of a trust for transactions in the capital market. Such powers and duties shall include:

- (1) an issuance of rules, regulations, notifications, orders or requirements under this Act;
- (2) a determination of fees for application, permission or operation of business under this Act;
- (3) a determination of criteria as a guideline for consideration of problems which may arise from the execution of this Act.

**Section 9.** The SEC Office shall have the powers and duties to take any action for the implementation of the resolution of the SEC and to take any other actions in accordance with the provisions of this Act. Such powers and duties shall include:

- (1) an issuance of notifications or orders under this Act;
- (2) an acceptance of fines which are administrative penalty and fees collected under this Act.

The fines and fees in (2) shall belong to the SEC Office.

**Section 10.** The SEC Office shall have the duty to disclose information regarding any violation and punishment of a person under this Act.

The disclosure of any other information obtained in the execution of this Act shall be in accordance with the criteria prescribed by the SEC.

## CHAPTER II

### Creation of Trust

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#### Part I

#### Trust Agreement

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**Section 11.** A trust shall be created when a written contract is made and a settlor has transferred property or created property right or any right constituting trust property to or for a trustee.

In case of a creation of trust whereby the settlor and the trustee are the same person, the trust shall be created when the settlor has submitted its written declaration to create a trust to the SEC Office in accordance with the criteria prescribed by the SEC.

**Section 12.** A settlor shall be one of the following juristic persons:

- (1) a company issuing securities under the law on securities and exchange;
- (2) an originator under the law on special purpose vehicles for securitisation;
- (3) a juristic person having the qualifications as prescribed by the SEC.

**Section 13.** A trust agreement shall not identify a settlor or a trustee as a beneficiary unless there is another beneficiary included and the benefit which the beneficiary who is the settlor or the trustee receives from the trust property shall not exceed the proportion as prescribed by the SEC.

In case where the benefit which the beneficiary who is the settlor or the trustee receives exceeds the proportion specified in paragraph one, such surplus shall be vested in other beneficiaries.

**Section 14.** A trust agreement without the following details shall be void:

- (1) names of the settlor and the trustee;
- (2) a beneficiary identifiable by name or qualifications or any facts indicating a person as a beneficiary of the trust;
- (3) objective of trust;
- (4) properties constituting the trust property.

**Section 15.** The SEC Office may prescribe items and contents required in a trust agreement in addition to those prescribed in section 14.

**Section 16.** A creation of trust in the following manners shall be void:

- (1) creation of trust not in accordance with section 11 or section 12;
- (2) creation of trust whereby a trustee is not permitted to operate a trust business under this Act, has been temporarily suspended from operating the trust business, has been revoked of the permission to operate the trust business or has been prohibited from executing a trust agreement.

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**Section 17.** A trust agreement shall not contain any provision in contradiction with this Act. Any provision of a trust agreement which is in contradiction with this Act shall be void.

## Part II

### Effect of the Creation of Trust

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**Section 18.** When a trust has been created, a settlor, a trustee and a beneficiary shall have the following rights and duties:

(1) the settlor shall have the rights and duties only as prescribed in the trust agreement;

(2) the trustee shall have a legal right over a trust property as an owner of a property or as a person entitled to the right over the property, and shall have the duty to administer the trust property in accordance with the trust agreement and this Act;

(3) the beneficiary shall be entitled to obtain the benefit arising from the administration of the trust property in accordance with the trust agreement and shall be entitled to other rights in accordance with the trust agreement and this Act.

**Section 19.** In case where a settlor, a trustee or a beneficiary is deceased, becomes bankrupt, is dissolved, or ceases to be a legal person or when the trustee has been replaced, there shall be no prejudice to the created trust unless the trust agreement states otherwise.

## Part III

### Amendment to Trust Agreement and Replacement of Trustee

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**Section 20.** An amendment to a trust agreement shall be made only to the extent specified in the trust agreement. In case where the trust agreement is silent, a beneficiary and a trustee may agree to amend the trust agreement provided that the amendment shall not be contrary to the intention of creating a trust.

**Section 21.** In case where the SEC Office has issued a notification regarding the requirement of additional details under section 15, if it is deemed appropriate for the benefit of a beneficiary and not in contradiction with the intention of creating a trust, the

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SEC Office shall have the power to order a trustee to amend the trust agreement to include such details as required in the notification within a reasonable period.

The trustee shall amend the trust agreement in accordance with paragraph one by the means prescribed under section 20 or by an approval of the SEC Office.

**Section 22.** A replacement of trustee shall be made in accordance with the terms of the trust agreement or upon the occurrence of any of the following events:

- (1) the trustee resigns from duty;
- (2) the trustee is held under receivership, ceases to be a legal person or ceases to hold a commercial bank status;
- (3) the trustee is removed from duty;
- (4) the SEC orders a temporary suspension of the operation of trustee business or a revocation of the permission to operate a trustee business.

**Section 23.** A trustee may resign or be removed from duty in accordance with the terms of the trust agreement. In case where the trust agreement is silent, a resignation or removal shall be in accordance with the following conditions:

- (1) the trustee shall notify the beneficiary in writing of the resignation in accordance with the criteria and time period prescribed by the SEC Office. Such resignation shall not cause any damage to the beneficiary;
- (2) if it appears that the trustee fails to administer the trust in accordance with the terms of the trust agreement or this Act, the beneficiary may remove the trustee in accordance with the procedures and conditions as prescribed by the SEC Office.

**Section 24.** An appointment of a new trustee shall be made in accordance with the terms of the trust agreement. In case where the trust agreement is silent, the appointment of a new trustee shall be in accordance with the criteria prescribed by the SEC Office.

**Section 25.** In case where a trust agreement specifies that there shall only be one trustee or where a trust agreement specifies that there shall be multiple trustees with each trustee separately administering the trust property, if there occurs a cause to replace a trustee but the new trustee cannot be appointed immediately thereafter and the trust agreement is silent, the trust property shall be administered in accordance with the following criteria:

- (1) in case where the trustee resigns, such trustee shall remain in duty until the trust property is completely vested in the new trustee;

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(2) in case where the trustee is dissolved, liquidated, suspended from operating trust business or becomes bankrupt, a liquidator, a receiver or any other person authorised by other laws to act in the same manner as the aforementioned persons, as the case may be, shall execute the necessary and appropriate actions relating to the trust property until the trust property is completely vested in the new trustee;

(3) in case where the trustee is discharged or where the SEC issues an order demanding a temporary suspension of trust business, or where the SEC revokes its permission given to the trustee to operate trust business, such trustee shall remain in duty only to protect the interest of the trust property or to exercise the rights in the trust property in order to prevent damage, depreciation or uselessness of the trust property until the trust asset is completely vested in the new trustee.

**Section 26.** Upon replacement of a trustee, the previous trustee or the remaining trustees, as the case may be, shall execute the necessary actions to ensure that a trust property is completely vested in the new trustee and to inform the new trustee of the preceding actions and the succeeding actions to take in the administration of the trust property and shall also deliver documents, evidence and information relating to the administration of the trust property in order that the new trustee can perform duties. In respect of such delivery, the previous trustee or the remaining trustees, as the case may be, shall sign in a written statement to certify the accuracy and completeness of the documents delivered to the new trustee, and shall deliver such written statement to the new trustee for keeping.

The previous trustee or the remaining trustees shall accomplish such actions in accordance with paragraph one within thirty days from the date the new trustee assumes trusteeship duties.

If the previous trustee or the remaining trustees fail to accomplish such actions in accordance with paragraph one within the specified period, the new trustee shall petition to the court for an order to vest the trust property in the new trustee.

In case where the previous trustee or the remaining trustees fail to accomplish such actions in accordance with paragraph one, if a damage occurs to the trust property or a beneficiary, the previous trustee or the remaining trustees shall pay compensation. However, if damage occurs to the trust property and the trust property has not completely been vested in the new trustee under section 27, a beneficiary may claim for compensation from the previous trustee or the remaining trustees for the benefit of the trust property.

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**Section 27.** A new trustee shall assume rights and duties from the previous trustee or jointly exercise the rights and duties with the remaining trustees, as the case may be, as well as subrogate a party in a lawsuit or become bound by a court judgment once the trust property is completely vested in the new trustee.

**Section 28.** A new trustee shall notify in writing to a third party known to be a party to a contract with the previous trustee or the remaining trustees that the new trustee has subrogated the rights and duties in lieu of the previous trustee or jointly with the remaining trustees.

In case where the new trustee fails to notify a third party in accordance with paragraph one, if damage occurs, the new trustee shall be liable to the trust property or the third party, as the case may be.

**Section 29.** In case where there is a cause to replace a trustee but the new trustee cannot be appointed immediately thereafter due to an inevitable circumstance, an interested person shall petition to the court for an appointment of a new trustee. If the court cannot make such appointment, the court shall terminate the trust and shall have the power to appoint any person to administer the trust property in accordance with section 52 with remuneration as determined by the court.

An appeal of the ruling of the court rendered in paragraph one shall be submitted to the Supreme Court.

### CHAPTER III

#### Rights, Duties and Liabilities of a Trustee

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**Section 30.** A trustee shall administer a trust property with the same level of duty of loyalty and duty of care as that of a professional and with expertise by treating a beneficiary with fairness for the highest benefit of the beneficiary.

For the benefit of performing duties of a trustee in accordance with paragraph one, the SEC may issue a notification prescribing the details of such performances.

A trust agreement shall not contain any clause exempting a trustee from liability where the trustee fails to perform the duties in accordance with paragraph one with intention, dishonesty or gross negligence.

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**Section 31.** In administering a trust property, a trustee shall not undertake any action which is in conflict with the benefit of the trust property regardless of whether such action is for the benefit of the trustee or of other persons unless such action is a demand for the trustee's remuneration or the trustee is able to demonstrate that the administration of the trust property has been carried out with fairness and that the relating information has been sufficiently disclosed to the beneficiary in advance without any objection from such beneficiary. Such disclosure of information and objection shall be in accordance with the criteria prescribed by the SEC Office.

**Section 32.** A trustee shall not set off an obligation owed to a third party arising beyond the performance of trustee against an obligation of a third party owed to the trustee arising from the administration of the trust property.

Violation of paragraph one shall render such set off void.

**Section 33.** Where a trustee enters into a legal act or other transactions with a third party, the trustee shall notify in writing to the third party that such transaction is undertaken in trusteeship, and documents of such legal act or transaction shall clearly state that such action is undertaken in trusteeship.

**Section 34.** A trustee shall keep an account of the trust property separate from other accounts of the trustee. In case where the trustee administers multiple trust properties, the trustee shall keep a separate account of each trust property. In doing so, the trustee shall record such account precisely and up to date.

In administering the trust property, the trustee shall separate the trust property from the trustee's personal properties and other properties in possession of the trustee. In case where the trustee administers multiple trust properties, the trustee shall separate each trust property from one another.

**Section 35.** In case where a trustee fails to comply with section 34, causing a mingle between the trust property and the personal properties of the trustee to the extent that it becomes impossible to distinguish one from another, it shall be presumed that:

- (1) the mingled properties belongs to the trust property;
- (2) the damage and debt arising from the administration of such mingled properties are the trustee's own damage and debt;
- (3) the benefit arising from the administration of such mingled properties belongs to the trust property.

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The mingled properties under paragraph one shall include the properties which have been transformed from the original mingled properties.

**Section 36.** In case where a trustee fails to comply with section 34, causing a mingle among the trust properties to the extent that it becomes impossible to distinguish one from another, it shall be presumed that the properties, including the properties which have been transformed and any benefit or debt arising from the administration of such properties, belongs to each trust property in proportion to the amount presented in the mingled properties.

**Section 37.** Administration of a trust property is a personal matter of the trustee and shall not be assigned to another person unless:

- (1) the trust agreement states otherwise;
- (2) the transaction is not personal in nature and does not require professionalism similar to that of a trustee;
- (3) the transaction is one which the owner of a property having the same objectives of administration as those of a trust property would generally delegate the power of administration to another person;
- (4) any other cases where the SEC issues a notification to prescribe delegable matters.

In case where the trustee fails to comply with paragraph one, the trustee shall be personally bound and not the trust property.

**Section 38.** In case where a trustee lawfully delegates a third person to administer the trust property in accordance with section 37, the trustee shall comprehensively and meticulously select such person as well as sufficiently supervise and inspect such delegated administration. The SEC may issue a notification specifying details regarding the trustee's actions in such matter.

**Section 39.** In case where multiple trustees are appointed, all trustees shall jointly administer the trust property unless the trust agreement specifically prescribes the duties of each trustee.

The joint administration of trustees shall be in accordance with the following criteria:

- (1) in case where the trust property is one having evidence of title, every trustee shall be named in such evidence of title as co-owners of property right or any right;

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(2) if a resolution is required, such resolution shall be unanimous unless the trust agreement states otherwise.

Administration of a trust property not in accordance with the resolution specified in (2) shall personally bind the trustee and not the trust property if it is a transaction which is made with a third person or which creates liability towards a third person.

**Section 40.** In case where a trustee is replaced, if the new trustee finds out that prior to the new trustee's assumption of duty there has been an administration of the trust property not in compliance with the trust agreement or this Act to the extent that the trust property suffers damage, the new trustee shall proceed as follows:

(1) claim for compensation from the responsible trustee;

(2) recover properties from a third person regardless of whether such third person has directly obtained such properties from the previous trustee and whether such properties in the trust property have been transformed into other properties unless such third person has acquired the properties for value and in good faith and did not know or had no reason to know that the acquisition of such properties results from an unlawful administration of the trust property.

**Section 41.** In administering the trust property and lawfully delegating trusteeship to another person to administer the trust property in accordance with section 37, if expense incurs or if a trustee is required to lawfully make an advance payment with cash or other personal properties of the trustee as the trustee deems fit to a third person, the trustee shall be entitled to reimburse the expense from the trust property unless the trust agreement specifies that such payment with cash or other properties shall be borne by the trustee.

An entitlement to reimburse such cash or other properties of the trustee in accordance with paragraph one shall be a preferential right over the right of a beneficiary and a third person having property right or other rights over the trust property. Such entitlement may be exercised immediately without termination of trust. In case where it is necessary to transform the properties in the trust property in order to reimburse the trustee with cash or properties, the trustee shall have the power to take such action provided that the trustee acts in good faith.

For the benefit of protecting properties in the trust property, the SEC may issue a notification prescribing the criteria, conditions and procedures regarding payment with cash or other personal properties of the trustee to a third person under paragraph one or the exercise of rights of the trustee under paragraph two.

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**Section 42.** A trustee shall exercise the right under section 41 until all debts owed by the trustee to the trust property are fully paid, except for those which can be set off in accordance with the Civil and Commercial Code.

**Section 43.** In case where the trustee fails to administer the trust property in accordance with the trust agreement or this Act, the trustee shall be held liable for damages incurred to the trust property.

In case where it is necessary and reasonable, for the benefit of the trust property, the trustee may seek approval from the SEC Office prior to the administration of trust in the manner not specified in the trust agreement. If the trustee has administered the trust property in accordance with such approval in good faith and for the best interest of the trust property, the trustee shall not be held liable under paragraph one.

In case of the joint administration of multiple trustees under section 39, all trustees shall be jointly liable under paragraph one in the same manner as joint debtors. The joint debtor principle shall not apply to the liability of trustees towards one another. Liability among trustees shall be governed by an agreement made among them. Notwithstanding such agreement, any trustee who is able to prove that the trustee had raised objection to or had been defrauded in such incompliance with the trust agreement or this Act shall not be held liable to the other trustees.

#### CHAPTER IV Rights of the Beneficiary and Protection

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**Section 44.** Subject to section 40 and section 43 paragraph two, a beneficiary shall be entitled to request a trustee to perform in accordance with the trust agreement or this Act as well as to claim for damages for the benefit of the trust property in case where the trustee fails to administer the trust property in accordance with the trust agreement or this Act.

In case where the trustee fails to administer the trust property in accordance with the trust agreement or this Act, which causes the properties of the trust property to be disposed of or transferred to a third person, the beneficiary shall be entitled to recover such properties from the third person for the benefit of the trust property regardless of whether such third person has directly acquired the property from the trustee or not and whether the trust property has been transformed into other properties or not, unless such third person has acquired the properties for value and in good faith and did not know or had no

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reason to know that the acquisition of such properties results from an unlawful administration of the trust property.

The beneficiary shall be entitled to recover actual expenses incurred from exercising the rights under paragraph one and paragraph two from the trust property as the court deems appropriate.

**Section 45.** If a transfer of property in the trust property causes damage to the trust property, any person who acquires the property in the trust property or in any way aids or abets the transfer of such property in the trust property, knowing or having reason to know that the trustee has transferred the property in the trust property not in accordance with the trust agreement or this Act, shall be held jointly liable with the trustee under section 44 as joint debtors. The beneficiary shall be entitled to claim for compensation from such person for the benefit of the trust property. In so doing, the provision of section 44 paragraph three shall apply *mutatis mutandis*.

For the liability under paragraph one, the court may hold such person liable for the amount which the court deems appropriate by taking into consideration the circumstances of such person's participation in causing damage to the trust property.

**Section 46.** In case where a beneficiary has notified the new trustee to perform duties in accordance with section 40 within a reasonable period but the new trustee has failed to comply within the said period, the beneficiary shall be entitled to claim for compensation from the responsible trustee or to recover properties from a third person, as the case may be, for the benefit of the trust property. In so doing, the provision of section 44 paragraph three shall apply *mutatis mutandis*.

**Section 47.** Each beneficiary shall be entitled to examine and request for a copy of the trust property's account or other documents as specified by the SEC Office during the office hours of the trustee.

The trustee may charge for the actual expense of duplication of documents under paragraph one as necessary but such expense shall not exceed the rate prescribed by the SEC Office.

**Section 48.** In case where a beneficiary is entitled to the surplus benefit under section 13 paragraph two or is entitled to the remaining property from a termination of trust under section 53 paragraph three, if the trust agreement does not state otherwise, each beneficiary shall be entitled to obtain such benefit or property in proportion to the

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benefit such beneficiary shall have received from an administration of the trust property in accordance with the trust agreement.

**Section 49.** In case of multiple beneficiaries, if the trust agreement does not state otherwise, the exercise of rights of a beneficiary under this Act shall be in accordance with the following criteria:

(1) an amendment to the trust agreement under section 20 or section 21, a discharge of trustee under section 23 (2), an appointment of a new trustee under section 24 or a request to terminate the trust under section 51 (2) shall be allowable only upon an approval from the beneficiaries entitled to the benefit of the trust property collectively not less than three-fourths of the total benefit of the trust property;

(2) a compensation claim for the benefit of trust property under section 26 paragraph four, a demand for the trustee to comply with the trust agreement or this Act or a compensation claim for the benefit of the trust property or the recovery of property in the trust property under section 44, section 45 or section 46 may be exercised by any individual beneficiary.

**Section 50.** A trust property is a property which shall not be used to pay the debt of a trustee.

In case where a trustee becomes bankrupt due to a personal debt or when a trustee's juristic status has been terminated, the trust property shall not form part of the bankruptcy estate or liquidated property, as the case may be.

## CHAPTER V

### Termination of Trust

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**Section 51.** A trust shall terminate as specified in the trust agreement and in the following events:

- (1) when the objectives of the trust agreement have been fulfilled;
- (2) when a court delivers a judgment or grants an order to terminate the trust for cause in accordance with section 29 or for other causes as requested by a trustee or a beneficiary;
- (3) when the trustee becomes the only remaining beneficiary;
- (4) when causes for a replacement of trustee under section 22 (1), (2), (3) or (4) occurs and the trust agreement prohibits the replacement of a trustee.

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**Section 52.** Subject to section 29, when a trust is terminated, the trustee shall remain in duty to collect, dispose and allocate properties in accordance with section 53, except in the case where the trust terminates because the trustee dissolves, liquidates or becomes bankrupt, a liquidator or a receiver, as the case may be, shall be the collector, disposer and allocator of such properties until completion.

**Section 53.** A payment of debts and expenses upon a termination of trust shall be in the following order:

- (1) expenses incurred from a collection, disposal and allocation of properties;
- (2) overdue and payable fees and tax;
- (3) remuneration of the persons specified under section 29 or section 52, expenses incurred from a legal action of a beneficiary under section 44 paragraph three, section 45 or section 46 and expenses in relation to or in connection with the administration of the trust property over which the trustee has lawful claims and remuneration of the trustee;

- (4) other debts.

In case where the trust property is insufficient to be allocated for payment of expenses or debts in any particular order, payment of such expenses or debts shall be made to that order by means of debt apportionment.

After deducting the payment of such expenses and debts under paragraph one, if there are still properties remaining in the trust property, they shall be allocated to the persons specified in the trust agreement. If the trust agreement is silent, all the remaining properties and rights shall be vested in the beneficiary.

The provision of section 42 shall apply to the payment of debt to the trustee from the trust property under paragraph one *mutatis mutandis*.

The SEC Office may issue a notification prescribing the criteria, conditions and procedures concerning the collection, disposal and allocation of properties under paragraph one.

## CHAPTER VI

### Supervision of Trustee

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#### Part I

#### Permission

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**Section 54.** No person shall undertake trust business unless such person receives permission from the SEC.

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**Section 55.** A person eligible to apply for the permission to undertake trust business with the SEC shall be:

- (1) a commercial bank under the law on commercial banking;
- (2) a financial institution established by a specific law;
- (3) any other juristic persons as prescribed by the SEC.

The person requesting for permission under paragraph one shall have the financial condition, work system, and qualification as well as pay fees as prescribed by the SEC.

The SEC Office shall issue a public notification specifying the names of the persons granted a licence to operate trust business.

**Section 56.** In case where it is necessary to maintain credibility or trustworthiness in the system of trust business, the SEC shall have the power to prescribe conditions for a trustee to comply in the trusteeship.

In case where the circumstance creating necessity under paragraph one has changed, the SEC may modify or change such prescribed conditions.

## Part II

### Supervision of Business Operation

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**Section 57.** A trustee shall provide for an appropriate operating system for the administration of the trust property for the following actions:

- (1) to separate the trust property from the personal property of the trustee;
- (2) to administer the trust property in accordance with the trust agreement and this Act;
- (3) to keep record of ownership or right over the properties in the trust property, income, expense and debt of the trust property as well as any account in connection with the trust property;
- (4) to supervise and monitor the benefits of the trust property;
- (5) to allocate benefits to a beneficiary;
- (6) to control, inspect and prevent the administration of the trust property in contradiction with the trust agreement and this Act as well as the dishonest administration of the trust property;
- (7) any other operating systems prescribed by the SEC.

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**Section 58.** In order to administer the trust property for the benefit of a beneficiary or for the protection of a third person who engages in a legal act with a trustee, the SEC shall have the power to issue a notification prescribing the criteria concerning the execution of powers and duties of the trustee, the maintenance of financial condition, the purchase of insurance for liability arising from the trust business and the submission of reports or other documents to the SEC Office.

**Section 59.** A trustee shall prepare a financial statement of the trust property separately from the personal financial statement of the trustee, taking into consideration the standard prescribed by the law on accounting profession.

The financial statement prepared under paragraph one shall be audited and commented by an auditor approved by the SEC Office. Such auditor shall not be a director, officer or employee of the trustee.

The financial statement under paragraph one shall be submitted to the SEC Office and the SEC Office may disclose or order the trustee to disclose to the public in accordance with the criteria prescribed by the SEC Office.

The SEC shall have the power to issue a notification prescribing appropriate circumstances where the preparation of a financial statement under paragraph one is deemed unnecessary and the conditions for the trustee to follow.

**Section 60.** The SEC Office shall, if deemed appropriate, issue an order to direct a trustee to act or refrain from acting within a specified period in order to prevent or restrain damage which may occur to the trust property or the public in case where a trustee, a director, a manager, an officer, an employee or a representative of the trustee or a person assigned by the trustee acts or causes the commission of the following actions:

- (1) failing to perform the duty of a trustee in accordance with the trust agreement or this Act;
- (2) administering the trust property in an inappropriate manner or in a manner which may cause damage to the trust property;
- (3) failing to submit a report or documents as prescribed by the SEC under section 58;
- (4) failing to comply with the conditions under section 56.

**Section 61.** In order to avoid any constraint with other laws when applying trust for conducting transactions in the capital market, the following practices shall be followed:

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(1) in case where a trustee has correctly prepared an account of property and sorted the trust property under section 34, the regulator under the law on the supervision of commercial banks or financial institutions, the law on securities and exchange and other laws to be additionally prescribed by a ministerial regulation shall not consider or calculate the property in the trust property together with the personal property of the trustee in the consideration of the trustee's duty or compliance with the said laws;

(2) in order to comply with of the objective of the law prescribed in (1), the Minister by and with the advice of the regulator of such laws shall issue a ministerial regulation prescribing the consideration or calculation of properties in the trust property together with the property of a beneficiary so as to comply with any requirement of such laws

## CHAPTER VII

### Competent Official

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**Section 62.** In the performance of duty, a competent official shall have the following powers:

(1) enter the place of business of the trustee or the place where the data of the trustee is collected or processed between sunrise and sunset or during the office hours of such place in order to examine any activity in connection with the trust business as well as collect any relevant document, evidence or data;

(2) enter into a commercial bank or a financial institution between sunrise and sunset or during the office hours of such place in order to examine an account book, document or evidence which may be related to the examination or execution under this Act;

(3) search any place between sunrise and sunset or during the office hours of such places where there is a reasonable suspicion that an offence under this Act has been committed;

(4) attach relevant documents or evidences in connection with the commission of an offence under this Act for a period of not exceeding one hundred and eighty days for the benefit of the examination or taking a legal action;

(5) order a trustee, the person authorized to collect or process data of the trustee or a person assigned by the trustee to undertake any action on behalf of the trustee including a director, an officer, an employee and the auditor of the trustee to testify, deliver or present the account book, document, seal or other evidences in connection with the operation of trust business;

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(6) order any persons who have knowledge of any relevant actions or facts that will be beneficial to the work of the competent official to testify or deliver or present the account book, document, evidence or material relating to or necessary for the work of the competent official.

After such entrance and examination under (1) or (2) or search under (3), if such action is not complete within the given time, it may continue at night or beyond the office hours of such place.

In performing the duties under (1) or (2), the competent official shall not take any action which amounts to intimidation or a search defined under the Criminal Procedure Code. In the case under (3), a search warrant is required unless there is a reasonable ground to believe that obtaining the search warrant would be untimely and that by the time the search warrant is obtained, such document or evidence will have already been relocated, concealed, destroyed or transformed. In such case, the search, seizure or attachment of document or evidence relating to the commission of an offence shall be done without a search warrant. However, these actions shall comply with the search principle under the Criminal Procedure Code and the search shall not be commenced at night unless it is during the office hours of such place.

An exercise of power of the competent official under paragraph one shall be executed against a person directly involved with the issue under examination. Execution under (2), (3), (5) or (6) shall be approved by the SEC Office in advance and shall also be given a reasonable time period for such person to comply with the order issued under (5) or (6).

**Section 63.** Where it is necessary to obtain computer data in order to perform a duty, a competent official shall make a request to the competent official under the law on computer crimes in order to obtain such computer data. The computer data obtained shall be deemed as admissible evidence for the execution of this Act.

**Section 64.** The person concerned shall facilitate a competent official in the performance of duty.

**Section 65.** A competent official shall present an identification card to the person concerned in the performance of duty.

The identification card of the competent official shall be in accordance with the form prescribed by the Minister.

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**Section 66.** In the performance of duty under this Act, a competent official shall be an officer as defined under the Criminal Code.

## CHAPTER VIII

### Penalty, Statute of Limitation, and the Settlement Committee

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#### Part I

#### Administrative Penalty

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**Section 67.** Administrative penalties shall include:

- (1) probation;
- (2) administrative fine;
- (3) public reprimand;
- (4) restrictions on the business operation permitted under this Act;
- (5) suspension on the business operation permitted within a specified time period. In so doing, any or all of the trust agreements may be suspended;
- (6) revocation of permission.

**Section 68.** In imposing an administrative fine, the amount of such fine shall not exceed one million baht for each act.

In case where a person imposed with an administrative fine under paragraph one refuses to pay such fine, the provisions relating to the administrative enforcement under the law on administrative procedure shall apply *mutatis mutandis*.

**Section 69.** The following persons shall have the power to impose an administrative penalty:

- (1) the SEC Office for administrative penalties under section 67 (1) or (2);
- (2) the administrative panel under section 72 for the administrative penalties under section 67 (1), (2), (3) or (4);
- (3) the SEC for the administrative penalties under section 67 (1), (2), (3), (4), (5) or (6).

By imposing an administrative penalty under section 67, the authorised person shall have discretion to impose one or multiple penalties and shall have the power to order the person imposed with the penalty to take any action or refrain from taking any action in order to correct or prevent the repetitive violation of or incompliance with this Act, criteria, order or condition prescribed under this Act.

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**Section 70.** A trustee who undertakes the following actions shall be imposed with an administrative penalty under section 67:

- (1) failure to pay the fee or part of the fee as prescribed under section 8 (2);
- (2) violation or incompliance with section 25, section 26, section 30 paragraph one, section 31, section 32, section 33, section 34, section 37, section 38, section 39, section 40, section 42, section 52, section 53, section 57 or section 59 paragraph one or violation or incompliance with the criteria or order, condition, procedure or detail prescribed under section 21, section 31, section 41 paragraph three, section 53 paragraph five, section 56, section 58, section 59 paragraph three or paragraph four or section 60;
- (3) obstruction or failure to provide convenience to the beneficiary in the examination of a trust account under section 47.

**Section 71.** In case where a trustee commits an offence under section 70, directors, managers or persons responsible for the operation of the trustee shall also be imposed with an administrative penalty under section 67 unless they can prove that they have no part in such commission of an offence by the trustee.

**Section 72.** There shall be one or multiple administrative panels and each panel shall consist of persons appointed by the SEC not exceeding five persons.

The qualifications and procedure of the appointment of panel members under paragraph one shall be in accordance with the criteria prescribed by the SEC.

**Section 73.** The SEC Office shall collect any facts relating to the commission of an offence which is subject to an administrative penalty and shall have the power to take preliminary considerations for the following actions:

- (1) in case where the SEC thinks that the type of administrative penalty which should be imposed on the accused person is within the power of the SEC Office, the SEC Office shall be the one who considers an imposition of such penalty;
- (2) in case where the SEC finds that the type of administrative penalty which should be imposed on the accused person is within the power of an administrative panel or the SEC, the SEC Office shall submit such issue to the administrative panel or the SEC, as the case may be, to consider the imposition of such penalty.

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**Section 74.** In imposing an administrative penalty, the person authorised to impose the penalty shall take into consideration the circumstances of an offence, damage arising from such action as well as the degree of penalty to be imposed on the imposed person in accordance with the criteria prescribed by the SEC.

**Section 75.** Subject to the law on administrative procedure, the consideration and issuance of an order imposing an administrative penalty shall be in accordance with the criteria prescribed by the SEC.

**Section 76.** A trustee, a director, a manager or a person responsible for operating trust business shall have the right to appeal the order of the SEC Office or the administrative panel imposing penalty to the SEC within thirty days from the date such order is served in accordance with the criteria prescribed by the SEC.

A consideration and adjudication of an appeal under paragraph one shall be in accordance with the criteria prescribed by the SEC.

An appeal under paragraph one shall not defer the enforcement of an administrative penalty by the SEC Office or the administrative panel.

A challenge against the order to impose penalty or the adjudication of appeal by the SEC shall be filed with the Administrative Court of the First Instance.

## Part II Criminal Penalty

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**Section 77.** Any person who operates a trust business without permission under section 54 shall be liable to an imprisonment for a term of not exceeding ten years or to a fine of not exceeding one million baht, or to both and, in addition, a fine of not exceeding ten thousand baht per day throughout the period which the violation continues.

**Section 78.** Any person without permission to operate a trust business represents name, name tag or advertisement in business as a trustee or any other words which have a similar meaning shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding three hundred thousand baht, or to both and, in addition, a fine of not exceeding ten thousand baht per day until such use or representation ceases unless that person is entitled to use such name or words in accordance with other laws.

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**Section 79.** Any person who violates or fails to comply with an order imposing administrative penalty under section 67 (4) or (5) shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding three hundred thousand baht, or to both and, in addition, a fine of ten thousand baht per day throughout the period which the violation continues.

**Section 80.** Any person who gives false testimony to a competent official which is material in the examination or execution under this Act shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding one hundred thousand baht or to both.

In case where the person who has given such false statement under paragraph one is a trustee, a director, a manager or a person responsible for any undertaking done by the trustee shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding two hundred thousand baht, or to both, unless that person is able to prove that such person has no involvement in the commission of an offence.

**Section 81.** Any person who obstructs or fails to comply with an order or fails to facilitate a competent official in the performance of duty under section 62 shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding one hundred thousand baht, or to both.

If the person under paragraph one commits or threatens to commit an act of violence, the offender shall be liable to imprisonment for a term of not exceeding two years or to a fine of not exceeding two hundred thousand baht, or to both.

**Section 82.** Any person who removes, damages, destroys or renders useless any seal or mark which a competent official has stamped or affixed in the performance of duty under section 62 as a marked evidence of attachment or safekeeping shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding three hundred thousand baht, or to both.

**Section 83.** Any person who damages, destroys, conceals, takes away, loses or renders useless any property or document which a competent official has kept or attached or has ordered for the same to be submitted as evidence under section 62 and whether or not such competent official keeps the property or document or has ordered such person or any other person to submit or to keep such property or document, shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding three hundred thousand baht, or to both.

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**Section 84.** An auditor under section 59 who makes a false report shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding three hundred thousand baht, or to both.

**Section 85.** A director, a manager, an officer, an employee or a representative of a trustee or any other person assigned to administer the trust property, who in any way dishonestly fails to perform duties and causes damage to the trust property, shall be liable to imprisonment for a term of not exceeding ten years or to a fine of not exceeding two million baht, or to both.

**Section 86.** A director, a manager, an officer, an employee or a representative of a trustee or any other person assigned to administer the trust property, who dishonestly misappropriates the trust property whether for oneself or for a third person, shall be liable to imprisonment for a term of not exceeding ten years or to a fine of not exceeding two million baht, or to both.

**Section 87.** A director, a manager, an officer, an employee, or a representative of a trustee, or any other person assigned to administer the trust property, who causes damage, destroys, depreciates, or renders useless any property in the trust property, shall be liable to imprisonment for a term of not exceeding ten years or to a fine of not exceeding two million baht, or to both.

**Section 88.** A director, a manager, an officer, an employee, or a representative of a trustee, or any other person assigned to administer the trust property, who acts or allows others to act as follows:

- (1) cause damage, destroy, change, abridge or falsify an account, a document, or any evidence relating to the administration of the trust property;
- (2) record a false statement or fail to record a material statement in the account or document relating to the administration of the trust property;
- (3) render an incomplete, incorrect, outdated or inaccurate account or document relating to the administration of the trust property or;
- (4) certify correctness and completeness of a written statement under section 26 paragraph one which is false.

If an act or the allowing of action under paragraph one is committed in order to deceive the trustee or the beneficiary so that they fail to receive the benefit they deserve or to deceive any other person, such person shall be liable to imprisonment for a term of not exceeding ten years or to a fine of not exceeding two million baht, or to both.

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**Section 89.** Any person who causes another person to commit offences as prescribed under section 80, section 81, section 82, section 83, section 84, section 85, section 86, section 87 or section 88, whether by employment, compulsion, threat, hire, instigation or by any other means is an instigator of crime and shall be liable to the punishment provided by the law for such section.

**Section 90.** Any person who, by any means, commits any act in order to assist or facilitate the commission of an offence as prescribed under section 80, section 81, section 82, section 83, section 84, section 85, section 86, section 87 or section 88 whether prior to or at the time of commission of an offence, although the offender has no knowledge of such assistance or facilitation, is a supporter of crime and shall be liable to the punishment provided by the law for such section.

**Section 91.** In auditing of the trustee's account, whether performed as an auditor of the trustee or other positions as allowed by the trustee to perform the accounting audit, if the auditor finds any suspicious circumstances that a director, manager, officer, employee or representative of trustee or any other person assigned to administer the trust property has committed an offence under section 85, section 86, section 87 or section 88, the auditor shall notify the fact relating to such circumstances of the offence to the SEC Office.

Any auditor who violates or fails to comply under paragraph one shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding one hundred thousand baht, or to both.

**Section 92.** Any person who comes to the knowledge of another person's business in the course of performing duties as prescribed under this Act and such knowledge or information is classified as confidential or usually should not be disclosed, discloses such information to another person, shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding one hundred thousand baht, or to both.

The provision in paragraph one shall not apply to the following disclosure:

- (1) disclosure within given powers and duties;
- (2) disclosure for the benefit of investigation or trial;
- (3) disclosure in connection with the commission of an offence under this Act;
- (4) disclosure for the benefit of correcting a status or operation of the trustee;
- (5) disclosure to the auditor of a person permitted to undertake a trust

business;

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(6) disclosure to both domestic and international agencies or relating organisations approved by the SEC Office;

(7) disclosure upon a written consent from a person who owns or is authorised to disclose the information;

Any person, who comes to the knowledge information from the disclosure under paragraph two (1) (2) (3) (4) (5) (6) and (7) which is classified as confidential or usually should not be disclosed, discloses such information to another person shall be liable to punishment under paragraph one unless the disclosure is in accordance with paragraph two.

### Part III

#### Statute of Limitation and Settlement Committee

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**Section 93.** For offences in this Chapter subject to an administrative penalty, if the administrative penalty has not been imposed within one year from the date a competent official has made a decision that an offence has been committed or within five years from the date of the commission of such offence, the statute of limitation shall be expired.

**Section 94.** For the offences under section 78, section 80 paragraph one, section 81 paragraph one, section 84 and section 91 paragraph two which do not cause grave damage to the trust property or in case where a beneficiary suffers damage but has been compensated by the offender to a satisfactory level, the Settlement Committee appointed by the Minister under the law on securities and exchange shall have the power to settle such case in accordance with the criteria prescribed by the SEC.

In case where the Settlement Committee has settled a case and the offender has paid the fine within a period of time as determined by the Settlement Committee, the right to file a criminal case on the ground of such offence shall be terminated.

Countersigned by:  
General Surayuth Julanont  
Prime Minister

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