

Tobacco Authority of Thailand Act,

B.E. 2561 (2018)

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun

Given on the 10th day of May, B.E. 2561 (2018)

Being the 3rd year of the Present Reign

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun has been graciously pleased to proclaim that:

Whereas it is expedient to promulgate the law on Tobacco Authority of Thailand;

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

Section 1. This Act is called the “Tobacco Authority of Thailand Act, B.E. 2561 (2018)”

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:

“Tobacco” means tobacco according to laws on excise taxes.

“Tobacco leaves” mean tobacco leaves according to laws on excise taxes.

“Tobacco business” means planting of tobacco trees, tobacco fermentation, tobacco roasting, tobacco cutting or other operations related to tobacco for business interest.

“Products from other plants” means products from other plants used in production or being beneficial to tobacco production as specified in ministerial regulations.

“Board of Directors” means Board of Directors of Tobacco Authority of Thailand.

“Governor” means Governor of Tobacco Authority of Thailand.

“Officers” mean Officers of Tobacco Authority of Thailand.

“Employees” mean Employees of Tobacco Authority of Thailand.

“Minister” means acting minister having charge according to this Act.

Section 4. The Minister of Finance shall be in charge according to this Act, and shall have the power to issue Ministerial Regulation for the execution of this Act.

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

Chapter 1

Establishment, Capital and Reserve

Section 5. There shall be established an organization called “Tobacco Authority of Thailand”, and shall be named in English “Tobacco Authority of Thailand”, abbreviated as “TOAT”, and there shall be an emblem of “TOAT”.

The shape and character of the emblem under paragraph one shall be prescribed in the Ministerial Regulation.

Section 6. TOAT shall be a juristic person having headquarter in Bangkok or other provinces, and there may be established branch offices or agencies at any other place either within or outside the Kingdom; however, the establishment of a branch office outside the Kingdom shall be approved by the Council of Ministers.

Section 7. TOAT shall have objectives to manufacture cigarettes which is the government’s monopoly business according to the Excise Tax Act as well as other businesses as follows;

- (1) To operate an industry and business related to tobacco, tobacco leaves or products from other plants both within or outside the Kingdom
- (2) Being hired for manufacturing tobacco products for export to sale outside the Kingdom
- (3) To operate a business related to equipment, tools or appliances related to the industry or business according to (1)
- (4) To promote a study, research, development and improvement of quality and standard for tobacco production, tobacco leaf products or products from other plants
- (5) To provide cooperation for government agencies in order to prevent and suppress offences related to tobacco, tobacco leaves or products from other plants
- (6) Operate other businesses related to cigarette production or other businesses according to (1), (2), (3), (4), and (5), or for TOAT’s interest

Section 8. TOAT shall have the power to act within the scope of its objectives under section 7 both within and outside the kingdom, and such power shall include:

- (1) To hold ownership or possessory right, property right or other rights

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- (2) To undertake any juristic acts
 - (3) To assist, advise, provide suggestions, trainings, academic knowledge or cooperation regarding tobacco, tobacco leaves or products from other plants
 - (4) To borrow money or apply for a loan
 - (5) To lend money with surety or security as a person or property for promotion of the tobacco leaves business, tobacco industry or products from other plants
 - (6) To issue a bond or any other instruments for investment
 - (7) To establish a limited company or public limited company in order to operate businesses regarding or related to TOAT's businesses. The limited company or public company established in the Kingdom shall not according to the Foreign Business Act contain foreigners who hold capital shares exceeding forty nine percent of the company's registered capital.
 - (8) To establish juristic person without purposes to seek for benefits or income for sharing
 - (9) To join a business with other organizations whether they are private or public either within or outside the Kingdom, or enter into a juristic partnership or hold shares in a limited company or public limited company for the businesses under TOAT's objectives
 - (10) To govern, supervise, maintain, manage, use and provide benefit from TOAT's properties
 - (11) To perform other actions related or connecting to complete conformance to TOAT's objectives

Section 9. Capital of TOAT consists of:

- (1) money and properties transferred to it under section 39
- (2) money or properties donated to it;
- (3) money and properties transferred to it from the government or the government agencies

Section 10. TOAT may have the following incomes:

- (1) income from the operation of industry and business according to TOAT's objectives
- (2) incomes from investment or collaborate with third parties to operate businesses related or connecting to TOAT's businesses
- (3) remuneration, service charges or other income from business operation
- (4) interest of money or property of the TOAT

Section 11. Reserves of TOAT shall consist of ordinary reserve for contingencies, reserve for business expansion, reserve for amortization, and other reserves for each specific objective as the Board of Directors deems appropriate.

The reserves may be expended only by the approval of the Board of Directors.

Section 12. Properties of TOAT shall not be subject to the execution of judgment.

Chapter 2

Board of Directors and Governor

Section 13. There shall be a Board of Directors called the “Board of Directors of Tobacco Authority of Thailand” consisting of one Chairman and other Directors not more than nine persons.

The Governor shall be Director and secretary, and the Governor shall appoint not more than two officials as assistant secretaries.

The Council of Ministers shall appoint the Chairman and other Directors.

Section 14. The Chairman and Directors appointed by the Council of Ministers shall be qualified having knowledge and expertise in agriculture, industry, sciences, engineering, economics, management, information technology or laws.

Section 15. The Chairman and Directors appointed by the Council of Ministers shall hold office for a term of three years each.

Upon the expiration of term under paragraph one, if the new Chairman or Director has not yet been selected or appointed, the Chairman or Director whose term has expired shall remain in office to continue performing duties until the new selected or appointed Chairman or Directors assume his, her or their duties.

The Chairman or Director appointed by the Council of Ministers who vacates office upon the expiration of the term may be reappointed, but shall not hold office for more than two consecutive terms.

Section 16. Apart from the retirement upon the termination of their terms of office under section 15, the Chairman and Directors appointed by the Council of Ministers shall vacate their office upon:

- (1) death
- (2) resignation
- (3) being dismissed by the Council of Ministers
- (4) being disqualified or under any of the prohibitions according to the Standard Qualification of State Enterprise Directors and Officials Act

In the case where the Chairman or Directors appointed by the Council of Ministers vacates office before the expiration of term, the Board of Directors shall comprise of the remaining members, until new Chairman or Directors shall be selected or appointed to replace the vacated positions. And in the case that the Chairman vacates office before the

expiration of term, the remaining members shall select one member to act as Chairman temporarily.

In the case that the Council of Ministers appoints a Chairman or Director for the replacement, or in the case that the Council of Ministers appoints additional Directors during the time when Director already appointed still hold office, the appointees to replace the vacant positions or the additional members shall hold office for the remaining term of such members already appointed.

Section 17. The Board of Directors shall have the authorities and power to impose policies and exercise general supervision of activities of TOAT, such authorities and power shall include:

(1) To issue rules or regulations to ensure the compliance with objectives and authorities under section 7 and section 8

(2) To announce and determine criteria and conditions for tobacco business operation or other business operations related to other plants

(3) To issue rules or regulations related to management and operations

(4) To issue rules or regulations on meeting and undertaking of operations of the Board of Directors and sub-committee

(5) To issue regulations on work performance of the Governor and delegation of power to other person to perform on behalf of the Governor

(6) To issue rules or regulations on recruitment, appointment, salary or wage promotion or cut, discipline and disciplinary punishment, petition and appeal against disciplinary punishment, vacating from office, as well as determination of positions, salary rates, wages and other payments of officers and employees

(7) To issue regulations on the aid fund or other aids for the welfare of the officers, employees and their families

(8) To issue rules on the uniform of the Chairman, Directors, Governor, and Officers

(9) To appoint sub-committee to perform activities assigned by the Board of Directors

Rules or regulations with contents that limit the power of Governor or his or her appointee for undertaking juristic acts shall be published in the Government Gazette.

Section 18. The Chairman, Directors and sub-committee member shall receive remuneration as determined by the Council of Ministers.

Section 19. The Board of Directors shall appoint a person having qualifications and not being under prohibitions under the Standard Qualification of State Enterprise Directors and Officials Act as Governor.

Section 20. The Governor shall hold office for a term of not exceeding four years each, and may be reappointed, but shall not hold office for more than two consecutive terms.

Section 21. Apart from the vacation of office at the expiration of term under section 20, the Governor shall vacate office upon:

- (1) death
- (2) resignation
- (3) expiration of the term of the employment contract
- (4) being dismissed by the resolution of the Council of Ministers resulting from negligence, infamous conduct, or incompetence
- (5) being disqualified or under any of the prohibitions according to the Standard Qualification of State Enterprise Directors and Officials Act

Section 22. The Governor has the duty to administrate the affairs of TOAT to be in accordance with the laws, the government's policies or the resolution of the Council of Ministers, regulations, rules, announcement and policies prescribed by the Board of Directors, as well as the power to command all Officers and Employees.

The Governor must be responsible to the Board of Directors in the administration of the affairs of TOAT.

Section 23. The Governor has the power to:

- (1) recruit, appoint, remove, promote, demote, reduce salaries or wages, and impose disciplinary punishment as well as other activities in human resource management of the Officers and Employees under the regulations or rules prescribed by the Board of Directors. However, in the case of Officers in the level of director of department, or equivalent or higher, the Board of Directors' pre-approval shall be required

- (2) impose regulations on operations and determine conditions in the work of Officers and Employees without being contrary to or inconsistent with regulations or rules and policies prescribed by the Board of Directors.

Section 24. In the activities relating to a third party, the Governor shall be the representative of TOAT, and for this purpose, the Governor may delegate any person to perform a task on his or her behalf, provided that it must be in compliance with the regulations prescribed by the Board of Directors.

Any activity performed by the Governor which violates the regulations or rules under Section 17, paragraph two shall not be binding upon TOAT, except by the Board of Directors' approval.

Section 25. In the case where the Governor is not able to perform the duty based on any of reasons, or when the office of the Governor is vacant and no replacement has been appointed, the Board of Directors shall appoint one deputy-governor as the acting Governor.

However, if there is no deputy-governor or the deputy-governor is unable to perform the duty, the Board of Directors shall appoint Directors as the acting Governor.

The acting Governor shall have the same duties and authorities as the Governor's.

Section 26. The Chairman, Directors and Officers shall receive bonus or gratuity as prescribed by the Council of Ministers.

Chapter 3

Petition and Aid

Section 27. An Officer or Employee shall have the right to petition in accordance with the rules prescribed by the Board of Directors.

Section 28. TOAT shall make available a provident fund according to the law on provident fund, aid fund or other aids for the welfare of Officers, Employees, and their families in case of vacation from office, accident, illness, death, or other cases appropriate to receive the aid, provided that it shall be as per the regulations prescribed by the Board of Directors.

The provision of aid fund or other aids under paragraph one, the determination of criteria on contribution to the aid fund, the classification of persons entitled to the aids, the criteria on the provisions of aids, and the management of the aid fund shall be in accordance with the regulations prescribed by the Board of Directors.

Chapter 4

Finance, Accounting and Auditing

Section 29. TOAT must make an annual budget which shall be divided into payment to be received in a year and business operating expenses.

The business operating expenses shall be classified into capital budget and operating budget. The capital budget shall be submitted to the Council of Ministers for consideration and approval whereas operation budget shall be submitted to the Council of Ministers for acknowledgement.

Section 30. Income which TOAT receives from its operation in a year shall belong to TOAT so as to be operation expenses, and upon the deduction of operation expenses, appropriate burden expenses, including maintenance, depreciation cost, reserved money

under section 11, loan debt due, provident fund and aid fund or other aids for the welfare of the Officers and Employees according to Section 28 and investment budget as approved by the Council of Ministers, the remaining amount shall be sent by TOAT to the public finance as public revenue. This shall be in accordance with the rules prescribed by the Ministry of Finance.

Section 31. TOAT shall open a deposit account with a bank as per the rules prescribed by the Ministry of Finance.

Section 32. TOAT shall set up and maintain an accounting system in accordance with the generally accepted accounting standards, classified by the categories of the main works, and there shall be entered the particulars of receipts and expenditures and the assets and liabilities which shall represent actual and fair conditions of business by each category of works together with the particulars which are the sources of such entries. An internal audit of accounts shall be conducted regularly.

Section 33. TOAT shall prepare a financial statement and submit it to the auditor within ninety days as from the last date of the accounting year.

Section 34. The State Audit Office of the Kingdom of Thailand or a third party as appointed by the Board of Directors under the approval of the State Audit Office of the Kingdom of Thailand shall be the auditor to audit and certify all kinds of accounts and finances of TOAT every accounting year.

The auditor shall furnish auditing and financial reports, and submit it to the Board of Directors within one hundred and sixty day as from the last date of the accounting year so as for the Board of Directors to submit it to the Minister.

Section 35. TOAT shall prepare and publicize the previous annual report by showing the financial statement already certified by the auditor, as well as a summary report regarding TOAT's performance and accomplishments in the past year.

Chapter 5

Supervision and Control

Section 36. The Minister shall be charged with the general supervision of the activities of TOAT. For this purpose, the Minister may instruct TOAT to submit factual statement, comments, submit reports, perform or stop any action which is not in accordance with the government's policies or resolution of the Council of Ministers, as well as order for investigation of facts related to the TOAT's operations.

Section 37. Any matter that is to be proposed by TOAT to the Council of Ministers shall be first presented by TOAT to the Minister for further proposing to the Council of

Ministers. In this regard, the Minister may give opinions for the Council of Ministers' consideration.

Section 38. TOAT must obtain approval of the Council of Ministers prior to undertaking the following:

- (1) performing an investment project having value of exceeding one billion baht onwards
- (2) borrowing or lending money in an amount greater than one hundred million baht at each time
- (3) issuing bonds or other instruments for the purpose of investment
- (4) disposing immovable properties with a value over ten million baht.
- (5) establishing a limited company or limited public company within or outside the Kingdom
- (6) collaborating with other persons, holding shares in a limited company or limited public company, or entering into partnership with a juristic partnership

Transitory Provisions

Section 39. The Ministry of Finance shall transfer businesses, money, properties, rights, debts, responsibilities and liabilities for a part which is related to the businesses of the Thailand Tobacco Monopoly, Ministry of Finance, and which exists before the enforcement date of this Act to be under TOAT's possession as appointed by this Act. However, only a part of real estate which is necessary for TOAT's operation shall be transferred, as follows:

- (1) Land and buildings in which the office or Tobacco Monopoly Hospital are located, or which are used in the businesses of the Thailand Tobacco Monopoly, Ministry of Finance, according to details prescribed by the Council of Ministers based on the suggestions of Treasury Department together with Thailand Tobacco Monopoly, Ministry of Finance, including component parts and equipment, shall be transferred to TOAT on the effective date of this Act.
- (2) Other real estate as mutually agreed by Treasury Department and TOAT, and approved by the Council of Ministers shall be completely transferred within three years as from the effective date of this Act.

Legislation of laws on royal lands shall not apply to the transfer according to the paragraph one.

During the time the real estate according to (2) is not yet transferred, TOAT may continue utilizing the real estate without having to pay any rental fee.

Section 40. The Chairman and the Board of Directors of Tobacco Authority of Thailand, Ministry of Finance according to Thailand Tobacco Monopoly Management Regulations, B.E. 2543 (2000) as revised by Thailand Tobacco Monopoly Management Regulations (Vol 3), B.E. 2557 (2014) who hold office before the effective date of this Act shall be the Chairman and Directors of Tobacco Authority of Thailand according to this Act, and perform their duties until the Board of Directors of Tobacco Authority of Thailand according to this Act shall be established, but this shall not exceed ninety days as from the effective date of this Act.

Section 41. Managing Director of Tobacco Authority of Thailand according to Thailand Tobacco Monopoly Management Regulations, B.E. 2543 (2000) as revised by Thailand Tobacco Monopoly Management Regulations (Vol 3), B.E. 2557 (2014) who hold office before this Act's effective date shall be the Governor according to this Act, perform his or her duties until completing the term of employment contract, and continue to receive fixed remuneration, extra remuneration and other privileges according to the employment contract.

As for counting of office term of the Governor according to Section 20, it shall include the term for holding office as the Director of the Tobacco Authority of Thailand as well.

Section 42. The Officers and Employees of Thailand Tobacco Monopoly, Ministry of Finance, who hold office or perform duties before the effective date of this Act shall be Officers or Employees of the Tobacco Authority of Thailand according to this Act, as the case may be, and shall receive salary, wages, welfares and other benefits as received previously in the meantime, until the Governor shall be filled in the position and appointed to hold the office. However, they shall not be appointed to receive salary, wages, welfares and other benefits lower than those received previously. This shall be completed within one hundred eighty days as from the effective date of this Act.

The conversion to be the Official or Employee of Tobacco Authority of Thailand under paragraph one shall not be deemed as a discharge from employment because the original affiliation has terminated an employment, and the working period while being the staff member or employee of Thailand Tobacco Monopoly, Ministry of Finance shall be deemed to be working period for TOAT.

Section 43. The provident fund for officers or employees of Thailand Tobacco Monopoly, Ministry of Finance established according to laws on provident funds shall survive, and TOAT established according to this Act shall act as the employer.

Section 44. As for cases related to Thailand Tobacco Monopoly, Ministry of Finance that Ministry of Finance is a party to it or related to it in any manner and the cases are filed prior to the effective date of this Act, TOAT shall act as the party or related person instead, regardless of stages of the proceedings, and any attorney-in-fact authorized to act on behalf of Ministry of Finance shall be deemed that they are further authorized by TOAT as well.

Section 45. All rules, regulations, announcement or orders issued under Thailand Tobacco Monopoly, Ministry of Finance, which are in force on the day before the date this Act comes into force shall remain in force as is not contrary or inconsistent with this Act, until regulations, rules, announcement or orders under this Act comes into force.

Countersigned by

General Prayut Chan-o-cha

Prime Minister

Note:- Reason for announcement for enforcement of this Act is that Thailand Tobacco Monopoly, Ministry of Finance acts as state enterprise in type of business unit owned by the government, not a juristic person. Therefore, there are some limitations in the business operation. In addition, the cigarette production is the government's monopoly business, so it should be operated by a juristic person established by a specific law. Moreover, the Board of Directors of the Tobacco Authority of Thailand, which is elected from qualified persons having knowledge and expertise in various fields, should be established, in order to perform duties, and have authorities to impose a policy and control the business. This shall be performed in order to promote and develop industrial potentials and eliminate any obstacles in the business operation, and promote the research and development, production standard control and improvement based on social responsibility. As a result, the legislation of this Act is necessary.