

Unofficial Translation *

EMERGENCY DECREE ON ASSET MANAGEMENT COMPANY,
B.E. 2541 (1998)

BHUMIBOL ADULYADEJ, REX.

Given on the 22nd day of August B.E. 2541 (1998)

Being the 53rd 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 the asset management company;

By virtue of the provision of Section 218 of the Constitution of the Kingdom of Thailand, an Emergency Decree is hereby enacted, as follows:

Section 1 This Emergency Decree shall be called the “Emergency Decree on Asset Management Company, B.E. 2541 (1998)”.

Section 2 This Emergency Decree shall come into force as from the day following the date of its publication in the Government Gazette onwards.¹

Section 3 In this Emergency Decree,

“asset management”² means

(1) purchase or acceptance of transfer of non-performing asset of a financial institution or assets of a financial institution, whose business is suspended, dissolved or revoked the license of banking business, finance business or credit foncier business, and collateral of such assets in order to manage, dispose, distribute or transfer.

(2) service management of non-performing assets of a financial institution or assets of a financial institution, whose business is suspended, dissolved or revoked

* **DISCLAIMER**: “This Translation is provided by the Bank of Thailand as the competent authority for information purposes only. Whilst the Bank of Thailand has made efforts to ensure the accuracy and correctness of the translation, the original Thai text as formally adopted and published shall in all events remain the sole authoritative text having the force of law.”

¹ Published in the Government Gazette, Vol. 115, Part 51a, Page 12, dated 23th August B.E. 2541 (1998).

² Section 3 the definition of “asset management” is amended by the Act on Amending Emergency Decree on Asset Management Company B.E. 2541, (No. 2) B.E. 2562 (2019)

the license of banking business, finance business or credit foncier business, and collateral of such assets.

(3) purchase or acceptance of transfer of non-performing asset of finance business, including collateral of such assets in order to administer or dispose.

(4) service management of non-performing asset of financial business provider including the collateral of such assets.

(5) service consultant for debtor, financial institution or financial business provider in debt restructuring and operating related to the said consultant.

(6) other activities concerning or incidental to business under (1), (2), (3), (4) or (5) as prescribed in the notification of the Minister upon the approval of the Cabinet.

“non-performing asset”³ means the asset of a financial institution and financial business provider prescribed in the notification of the Bank of Thailand as non-performing asset which can be disposed, distributed or transferred to the asset management company.

“financial institution”⁴ means financial institution under the law of Financial Institution Business Act and other juristic person as prescribed by the Minister in the Government Gazette.

“financial business provider”⁵ means

(1) credit card which is the business to obtain a license under the law.

(2) personal loan provider which is the business to obtain a license under the law.

(3) Nano-Finance for the occupation which is the business to obtain a license under the law.

(4) Pico-Finance for the occupation which is the business to obtain a license under the law.

(5) other financial business provider as prescribed by the Minister in the Government Gazette.

³ Section 3 the definition of “non-performing asset” is amended by the Act on Amending Emergency Decree on Asset Management Company B.E. 2541, (No. 2) B.E. 2562 (2019)

⁴ Section 3 the definition of “financial institution” is amended by the Act on Amending Emergency Decree on Asset Management Company B.E. 2541, (No. 2) B.E. 2562 (2019)

⁵ Section 3 the definition of “financial business provider” is added by the Act on Amending Emergency Decree on Asset Management Company B.E. 2541, (No. 2) B.E. 2562 (2019)

“limited company” means a limited company under the Civil and Commercial Code or a public limited company under the law governing public limited companies.

“asset management company” means a limited company registered under this Emergency Decree.

“person with power of management”⁶ means

(1) a manager, deputy manager, assistant manager of asset management company or any person holding an equivalent position under a different title;

(2) a person with whom as asset management company has entered into a contract to delegate its management power in whole or in part; or

(3) a person who has de facto power to control or dominate a manager or director or management of an asset management company to comply with his order in formulating policy or conducting business of an asset management company.

“Minister” means the Minister in charge of the enforcement of this Emergency Decree.

Section 4 Registration of being an asset management company shall be conducted when there is the approval of the Governor of the Bank of Thailand, and the registration fee shall be paid at the rate prescribed in the schedule annexed to this Emergency Decree.

Rules and methods for applying request and consideration of registration shall be prescribed in the ministerial regulation.

In the operation of asset management, the registered asset management company shall comply with the rules prescribed in the notification of the Bank of Thailand.

Section 4/1 The asset management company shall undertake the followings when approved by the Bank of Thailand

(1) purchase or acceptance of transfer of assets of a financial institution, whose business is suspended, dissolved or revoked the license of commercial banking business, finance business or credit foncier business, and collateral of such assets.

⁶ Section 3 the definition of “person with power of management” is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. (No.2) B.E. 2562 (2019)

(2) provide an asset management service concerning non-performing asset of a financial institution or assets of a financial institution, whose business is suspended, dissolved or revoked the license of commercial banking business, finance business or credit foncier business, and collateral of such assets.

(3) purchase or acceptance of transfer of non-performing asset of financial business, including collateral of such assets.

(4) service management of non-performing asset of financial business provider including the collateral of such assets.

(5) service consultant for debtor, financial institution or financial business provider in debt restructuring including the operating related to the said consultant.⁷

In granting approval under the first paragraph, the Bank of Thailand may prescribe any rules, methods or conditions concerning such approval.

Section 4/2⁸ No asset management company shall appoint or allow any person with any of the following characteristics to be, or perform the duties of, a director, person with power of management, of the asset management company

(1) being a bankrupt or having been a bankruptcy fraud;

(2) having been imprisoned by a final court judgment for an offense related to property committed with dishonest intent;

(3) having been a director or person with power of management of the asset management company;

(4) having been dismissed or discharged from government service, state organization or agency on a charge of malfeasance in office;

(5) having been removed from the position of a director or person with power of management of a financial institution under the law on Financial Institutions Business Act or having been removed from the position of a director or person with power of management under the law on securities and exchange, unless exempted by the Bank of Thailand;

(6) being a director or person with power of management of another asset management company at the same time, unless exempted by the Bank of Thailand;

⁷ Section 4/1 paragraph 1 is amended by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. (No.2) B.E. 2562 (2019)

⁸ Section 4/2 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. (No.2) B.E. 2562 (2019)

(7) being a person having prohibited characteristics or other disqualifications as prescribed in the notification of the Bank of Thailand.

Section 5⁹ In the operation of asset management, the asset management company shall have power to raise funds by issuing securities or borrowing or lending money in accordance with the rules prescribed by the Bank of Thailand.

If the operation of asset management under the first paragraph is in the manner of undertaking of finance business or credit foncier business, or in the same manner as financial business, the asset management company can operate without being subject to the law of the said manner.

Section 6¹⁰ In the transfer of assets to the asset management company, if collateral of the assets are not right of mortgage, right of pledge or right arising out of guarantee, such collateral shall be vested in the asset management company.

Section 7¹¹ In the transfer of assets to the asset management company, if there is an action for enforcing claim in court, the asset management company shall be substituted for the party of such action, and may present new evidences to oppose documents previously submitted, cross-examine the witnesses already testifying, and oppose evidences already taken, and in the case that the court has rendered a judgment to enforce such claim, the asset management company shall assume the rights of the creditor under such judgment.

Section 8¹² In the transfer of assets to the asset management company, the asset management company and transferor shall be exempted from any fees and taxes occurred from transferring such assets, whether in whole or in part, as prescribed,

⁹ Section 5 is amended by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. (No.2) B.E. 2562 (2019)

¹⁰ Section 6 the definition of “assets” is amended by Section 5 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

¹¹ Section 7 the definition of “assets” is amended by Section 5 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

¹² Section 8 the definition of “assets” is amended by Section 5 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007) and the definition of “Asset Management Company and transferor” is amended by Section 6 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

on a general or specific basis, by the Minister and published in the Government Gazette.

Section 9¹³ In the transfer of assets which are the claims to the asset management company, if the asset management company appoints the originator to be an agent in collecting and receiving payment of debt, such transfer of the claim shall be legal without notice to debtors under Section 306 of the Civil and Commercial Code. The foregoing, however, shall not prejudice the rights of debtors to raise a defense under the second paragraph of Section 308 of the Civil and Commercial Code.

The agent in collecting and receiving payment of debt under the first paragraph has the duty to keep accounts and lists of debtors in accordance with the transferred claims as separate accounts and the debtor has the right to view themselves in the list of debtors.

In the case that the agent in collecting and receiving payment of debt is not the originator, the asset management company shall give notice concerning the transfer of claims to debtors since the date of appointment of such agent.

In the case where it is an urgent necessity to maintain the stability of the financial institution system and the delay may cause damage to public interest, the notification of transferring claims under the third paragraph due to the acceptance of transfer of assets which approved by the Bank of Thailand shall be published, as list with appropriate details, in the computer network system and at least one widely accepted daily newspaper for not less than three days. This shall be deemed as notice of transferring claims under Section 306 of the Civil and Commercial Code.

Section 10¹⁴ In the transfer of assets to the asset management company, the asset management company is allowed to collect interest from debtors but must not exceed the interest rate specified in an original contract as of the date of acceptance of transfer. However, if interest rate specified in an original contract is the floating rate and there is no reference interest rate based on calculation of the financial institution, it shall be calculated in accordance with the rules prescribed by the Bank of Thailand.

¹³ Section 9 the definition of “assets which are the claims” is amended by Section 7 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

¹⁴ Section 10 the definition of “assets which are the claims” is amended by Section 7 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

Where the asset management company grants additional credit to debtor for the purposes of transferred assets appreciation, the asset management company is able to collect interest at the rate agreed by both parties.

The provisions of Section 654 of the Civil and Commercial Code shall not apply to the proceeding under the first paragraph and the second paragraph. However, the interest rate charged shall not exceed the rate prescribed in the notification of the Bank of Thailand.

Section 10/1¹⁵ Section 7, Section 8, Section 9 and Section 10 shall not apply to the transfer of non-performing asset of the financial business operator to the asset management company as the case may be.

Section 11¹⁶ The asset management company shall prepare its account to show its current and actual results of operations and financial condition, based on the accounting standard established by a professional institution approved by relevant government authorities and in accordance with the rules prescribed in the notification of the Bank of Thailand.

Section 11/1¹⁷ The Bank of Thailand shall require the asset management company to prepare its financial statements, reports, information in any forms of media or produce any documents at interval or from time to time as requested by the Bank of Thailand and to provide clarifications or elaborate such financial statements, reports, information or documents in accordance with the rules prescribed in the notification of the Bank of Thailand.

The financial statements, reports, information, documents or clarifications submitted or produced pursuant to the first paragraph shall be completely and truthfully prepared by the asset management company. If the Bank of Thailand determines that the financial statements, reports, information, documents or clarifications submitted or produced pursuant to the first paragraph are incomplete,

¹⁵ Section 10/1 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541 (No. 2), B.E. 2562 (2019)

¹⁶ Section 11 is amended by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

¹⁷ Section 11/1 is added by section 9 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

untruthful, ambiguous or where the Bank of Thailand deems it necessary or appropriate, the Bank of Thailand shall have the power to appoint an auditor or specialist to conduct an audit and report the results to the Bank of Thailand, at the expense of such asset management company.

Section 12 The governor of the Bank of Thailand shall have power to revoke the approval of registration of being an asset management company, when it appears that:

(1) the asset management company operates business dishonestly or may cause damage to the public.

(2) the asset management company omits to act in accordance with law.

(3) the asset management company violates or fails to comply with rules prescribed in the ministerial regulation or prescribed by the Minister or the Bank of Thailand under this Emergency Decree.

(4) other cases as deemed appropriate by the Minister upon the recommendation of the Bank of Thailand

After revocation under the first paragraph, an unregistered asset management company shall no longer have right to obtain any benefits from the operation of the asset management under this Emergency Decree since the date of revocation

In the case where the appearance under the first paragraph is considered no danger, the Governor of the Bank of Thailand may order the asset management company to act or omit to act in place of the revocation of the approval of registration of being an asset management company and If the asset management company fails to comply with such order, the Governor of the Bank of Thailand shall still have power to revoke the approval of registration of being an asset management company and the second paragraph shall apply also.¹⁸

Section 12/1¹⁹ The Bank of Thailand shall have power to appoint person as competent officer to examine the business, assets and liabilities of an asset management company.

¹⁸ Section 12 para3 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

¹⁹ Section 12/1 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

Section 12/2²⁰ In the performance of duties, the competent officer shall have power to:

(1) enter the place of business of the asset management company or the place which is for collecting or processing data of the asset management company either by computer system or any other device, during the time between sunrise and sunset or during the business hours of such premises, to examine the business, operation, assets and liabilities of the asset management company, including documents, evidence or information concerning the asset management company.

(2) enter the place of business of a debtor of the asset management company, a company who operates any businesses on behalf of the asset management company, or the place which is for collecting or processing data of a company who operates any businesses on behalf of the asset management company either by computer system or any other device, during the time between sunrise and sunset or during the business hours of such premises. Such place shall be entered only when a competent officer has already examined the place of business of the asset management company and it appears that it is necessary to examine such place for the purpose of examination of the condition or operation of the asset management company.

(3) seize or attach documents or things connected with the commission of an offense under this Emergency Decree for examination or prosecution purpose, not exceeding one hundred and eighty days. An order for the seizure or attachment shall state the reason, necessity and rights of the person subject to such seizure or attachment.

(4) order any committee members, officer, employee, auditor of the asset management company, person who operates any businesses on behalf of the asset management company, or person, who collects or processes data of the asset management company either by computer system or any other device, to make a statement, submit or present accounts, documents, seals or other evidences concerning business, operation, assets and liabilities of the asset management company.

²⁰ Section 12/2 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

(5) order any person, for the purpose of the performance of duty of a competent officer, to make a statement, submit copies, or present accounts, documents, evidence or other things concerning or necessary to perform the duties.

After so entering and inspecting pursuant to (1) or (2), if such proceeding is not finished, it may continue onto the night or outside business hours of those premises.

The competent officer shall exercise such power under the first paragraph to person who directly related to the issue of the inspection. The operation following (2) shall obtain the prior approval of the Bank of Thailand and the operation following (4) and (5), shall be prescribed by the reasonable period of time for implementation.

Section 12/3²¹ In the performance of duties of the competent officer, all persons concerned shall facilitate them as may be appropriate.

Section 12/4²² In the performance of duties, a competent officer shall present an identification card to the persons concerned.

The officer identification card shall be in the form prescribed in the notification of the Bank of Thailand.

Section 12/5²³ In the performance of duties under this Emergency Decree, the competent officers shall be the officials under the Penal Code.

Section 13²⁴ Any asset management company which violates or fails to comply with the first paragraph of Section 4/1, Section 10, Section 11 or the second paragraph of Section 11/1 or violates or fails to comply with rules or order or conditions prescribed under the second paragraph of Section 4/1, Section 5, Section 10, Section 11, the first paragraph of Section 11/1 or Section 12 shall be liable to a fine not exceeding thirty thousand baht, and a further fine of not exceeding three thousand

²¹ Section 12/3 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

²² Section 12/4 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

²³ Section 12/5 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

²⁴ Section 13 is amended by the Act Amending Emergency Decree on Asset Management Company B.E. 2541 (No. 2), B.E. 2562 (2019)

baht per day throughout the continuation of such violation or failure until rectification has been made.

In case the asset management company commits an offence under the first paragraph, a committee member, manager or person who is responsible for the operations of such asset management company shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding three hundred thousand baht or both, unless it can be proven that he had no part in the commission of such offence.

Section 14²⁵ Any committee members, manager or person who is responsible for the operations of a asset management company, who acts or omits to act in order to obtain any unlawful benefit for himself or other person, which causes damage to the asset management company, shall be liable to imprisonment for a term of five years to ten years and a fine of five hundred thousand to one million baht.

Section 14/1²⁶ Any person who obstructs or fails to comply with an order of a competent officer in the performance of their duties under this Emergency Decree shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding one hundred thousand baht or both.

Section 14/2²⁷ Any person who fails to facilitate a competent officer in the performance of their duties under this Emergency Decree shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding sixty thousand baht or both.

Section 14/3²⁸ A settlement committee appointed by the Minister shall be empowered to settle out of court any offence under Section 13, Section 14/1 or Section 14/2.

²⁵ Section 14 is amended by the Act Amending Emergency Decree on Asset Management Company B.E. 2541 (No. 2), B.E. 2562 (2019)

²⁶ Section 14/1 is added by section 13 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

²⁷ Section 14/2 is added by section 13 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

²⁸ Section 14/3 is added by section 13 of the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

The settlement committee appointed by the Minister under the first paragraph shall comprise three members, at least one of whom must be an investigating officer under the Criminal Procedure Code.

Where the case has been settled by the committee and the accused has paid the fine in the amount and within the period of time specified by the settlement committee, such case shall be final under the Criminal Procedure Code.

If the accused does not agree to the settlement, or after having agreed thereto, fails to pay the fine within the period of time specified by the committee, the case shall proceed.

Section 14/4²⁹ In the case of an offence under Section 13, Section 14/1 or Section 14/2 which could be settled out of court, if the accused has not been prosecuted in court or the offence has not been settled out of court under Section 14/3 within two years from the date the officials found out such offence and reported the inspection to the Governor of the Bank of Thailand or within five years from the date of the commission of offence, such offence shall be barred from prosecution by way of prescription.

Section 15 The Ministry of Finance shall be in charge of the enforcement of this Emergency Decree and be authorized to issue ministerial regulation or notification for implementation of this Emergency Decree.

A ministerial regulation or notification under the first paragraph shall come into force upon its publication in the Government Gazette.

Countersigned by
Chuan Leekpai
Prime Minister

²⁹ Section 14/4 is added by the Act Amending Emergency Decree on Asset Management Company B.E. 2541, B.E. 2550 (2007)

Registration Fee Schedule

Registration fee

100,000 Baht